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Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1637

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

THE MAGNAVOX COMPANY OF TENNESSEE, *et al*
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 6, 1973
CERTIORARI GRANTED OCTOBER 9, 1973

Supreme Court of the United States

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UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

8.27.70	Charge filed
11.16.70	Regional Director's complaint and notice of hearing, issued
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10. 9.73	Order of Supreme Court granting Petition for certiorari, dated

* * * *

Case No. 10-CA-8555

IN THE MATTER OF:

THE MAGNAVOX COMPANY OF TENNESSEE
Respondent

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, CLC AND ITS LOCAL 796
Charging Party

* * * *

BEFORE:

HONORABLE ABRAHAM H. MALLER, Federal Trial Examiner.

APPEARANCES:

ALAN L. ROLNICK, ESQ., 730 Peachtree Street, N.E., Atlanta, Georgia 30308, appearing as Counsel for the General Counsel.

RONALD H. JANETZKE, ESQ., District 7, 3461 Office Park Drive, Kettering, Ohio 45439, appearing on behalf of the Charging Party.

RICHARDS FISHER, International Representative, International Union of Electrical, Radio and Machine Workers, Route 1, Box 163, Afton, Tennessee 37616, appearing on behalf of the Charging Party.

GEORGE K. McPHERSON, JR., ESQ., Smith, Currie & Hancock, 1405 Fulton National Bank Building, Atlanta, Georgia 30303, appearing on behalf of the Respondent.

EXCERPTS FROM PROCEEDINGS BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN CASE NO. 10-CA-8555

* * * *

[5] TRIAL EXAMINER: Will General Counsel representing the formal papers come forth?

MR. ROLNICK: At this time, I offer the formal papers. They have been marked for identification as General Counsel's Exhibit 1-A thru 1-H, Exhibit 1-H being an Index and Description of the Formal Documents.

(The documents above referred to were marked General Counsel's Exhibit Nos. 1-A thru 1-H for identification.)

MR. ROLNICK: They have been shown to all parties.

TRIAL EXAMINER: Any objections?

MR. McPHERSON: No objection.

TRIAL EXAMINER: Very well, being no objections then, [6] General Counsel's Exhibits Nos. 1-A thru 1-H is received in evidence.

(The documents above referred to, heretofore marked General Counsel's Exhibits Nos. 1-A thru 1-H, were received in evidence.)

* * * *

[7] MR. ROLNICK: I propose the following stipulations and I will take them one at a time. First, let's have this marked for Identification, please.

TRIAL EXAMINER: Very well.

(The document above referred to was marked General Counsel's Exhibit No. 2.)

MR. ROLNICK: I have marked for identification, General Counsel's Exhibit No. 2 which is a copy of a letter dated June 25, 1970 from Mr. Ronald H. Janetzke, General Counsel to Manager, Industrial Relations, The Magnavox Company in Greeneville. I offer General Counsel's Exhibit No. 2.

TRIAL EXAMINER: Very well, being no objections, General Counsel's Exhibit No. 2—

MR. McPHERSON: May I state my position to that, please?

TRIAL EXAMINER: I assumed this was by stipulation.

MR. McPHERSON: No, the next three documents—I will stipulate that it was sent. However, I will not stipulate concerning the truth of the matter contained therein in any way, shape or form.

TRIAL EXAMINER: Very well, with that understanding, General Counsel's Exhibit No. 2 is received in evidence at this time.

[8] (The document above referred to, heretofore marked General Counsel's Exhibit No 2, was received in evidence.)

MR. ROLNICK: I would like to have this next document marked as Exhibit No. 3.

TRIAL EXAMINER: Okay.

(The document above referred to was marked for identification as General Counsel's Exhibit No. 3.)

MR. ROLNICK: With regard to General Counsel's Exhibit No. 3, it is a two page letter dated July 16, 1970 from Mr. George K. McPherson, Jr. to Mr. Ronald H. Janetzke, General Counsel. I offer General Counsel's Exhibit No. 3.

TRIAL EXAMINER: Any objections?

MR. McPHERSON: I would stipulate to that on the same basis as I did to General Counsel's Exhibit No. 2.

MR. ROLNICK: With regard to Exhibit No. 3, this is a letter sent by Counsel and I think the matter contained therein is properly before the Trial Examiner and if Mr. McPherson does not want to stipulate to it, it is a letter that he sent, is he denying this?

MR. McPHERSON: I am saying that I will stipulate that I sent it to Mr. Janetzke in reply to his letter. However, I will not stipulate as to the—that that establishes any facts concerning the trial of this case. That is a statement in position only.

• • • •

[9] TRIAL EXAMINER: Well, I will receive General Counsel's Exhibit No. 3, and if there are any infirmities in it, you will have to demonstrate that to me. General Counsel's Exhibit No. 3 is received in evidence.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 3, was received in evidence.)

MR. ROLNICK: I would like to have another letter I have marked as General Counsel's Exhibit No. 4 for identification.

[10] TRIAL EXAMINER: Okay.

(The document above referred to was marked General Counsel's Exhibit No. 4 for identification.)

MR. ROLNICK: I now offer General Counsel's Exhibit No. 4, which is a copy of a letter dated August 24, 1970 from Mr. Janetzke to Mr. McPherson.

TRIAL EXAMINER: Any objections?

MR. McPHERSON: I will stipulate that the letter was sent, however, I would not stipulate to—that it proves the truth of the matter.

TRIAL EXAMINER: Very well.

MR. ROLNICK: It was received, is that correct?

MR. McPHERSON: Pardon?

MR. ROLNICK: It was received, is that correct?

MR. McPHERSON: That's correct.

TRIAL EXAMINER: General Counsel's Exhibit No. 4 is received in evidence.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 4, was received in evidence.)

MR. ROLNICK: I would like to have marked for identification, this booklet, as General Counsel's Exhibit No. 5.

(The document above referred to was marked General Counsel's Exhibit No. 5 for identification.)

MR. ROLNICK: I will now offer General Counsel's Exhibit [11] No. 5 which is a Collective Bargaining

Agreement entitled, "Agreement between Magnavox Company Of Tennessee, Greeneville, Tennessee and Local 796 of the International Union of Electrical Radio and Machine Workers, IUE-AFL-CIO-CLC dated July 1, 1968.

TRIAL EXAMINER: Any objection, Mr. McPherson?

MR. ROLNICK: I think it is part of the—

MR. McPHERSON: No objection.

MR. ROLNICK: I think the stipulation would be in order. This is the Contract Agreement between the Charging Party and the Respondent.

TRIAL EXAMINER: Do you so stipulate, Mr. McPherson?

MR. McPHERSON: We so stipulate.

TRIAL EXAMINER: General Counsel's Exhibit No. 5 is received.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 5, was received in evidence.)

MR. JANETZKE: One thing, the Contract between the International and the Local and the Company, rather than just between the Local and the Company as—

MR. ROLNICK: For identification purposes, I read what was on the outside cover of the Contract and the document will show the matters contained therein.

TRIAL EXAMINER: The document will speak for itself, yes.

[12] MR. ROLNICK: I would like to have marked General Counsel's Exhibit No. 6 for identification.

TRIAL EXAMINER: Okay.

(The document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

MR. ROLNICK: I offer as General Counsel's Exhibit No. 6, a copy of "Plant Rules" which were and are in effect, during material periods herein.

TRIAL EXAMINER: Any objection, Mr. McPherson?

MR. McPHERSON: No objection.

TRIAL EXAMINER: General Counsel's Exhibit No. 6 is received in evidence.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 6, was received in evidence.)

MR. ROLNICK: I would like to have marked for identification, General Counsel's Exhibit No. 7.

TRIAL EXAMINER: Okay.

(The document above referred to was marked General Counsel's Exhibit No. 7 for identification.)

MR. ROLNICK: I now offer General Counsel's Exhibit No. 7, a diagram purporting to show the area around and a portion of, the inside portion of Plant No. 3. This is a rough diagram and I think to—I think there may be certain slight [13] differences as far as scale, but it is basically correct.

MR. McPHERSON: No objection.

MR. ROLNICK: Excuse me, it shows on it such matters as the area of the time clocks and the areas of the parking lot entrances which the employees use.

MR. McPHERSON: Now, this is No. 7?

MR. ROLNICK: Yes, No. 7.

MR. McPHERSON: No. 7 you say shows the time clocks, this is the outside one, is it not? Mr. Trial Examiner, we would stipulate that this is an extremely rough approximation of The Magnavox Company Of Tennessee's facility No. 3.

MR. ROLNICK: That is correct.

MR. McPHERSON: But, beyond that, we would not be able to stipulate as to the small rectangles and the arrows shown on the diagram and there are several ambiguities on the diagram that I think should be further explained and what it is. But it is a rough approximation of the facility.

TRIAL EXAMINER: With that stipulation, the document will be received in evidence.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 7, was received in evidence.)

TRIAL EXAMINER: If there is any correction or anything you want to make from it, you will have the opportunity of doing so, but the burden will be on you, of course, Mr. McPherson.

[14] MR. ROLNICK: I would like to have this diagram marked for identification, General Counsel's Exhibit No. 8.

TRIAL EXAMINER: Okay.

(The document above referred to was marked General Counsel's Exhibit No. 8 for identification.)

MR. ROLNICK: I now offer as General Counsel's Exhibit No. 8 for introduction into evidence, a rough diagram of the inside of Plant No. 3, once again, showing such areas as the time clocks, working areas and so forth.

MR. McPHERSON: Once again I would agree that it is a rough approximation of the inside of Plant No. 3's facilities, with apparently no major discrepancies.

TRIAL EXAMINER: Very well then, General Counsel's Exhibit No. 8 is received in evidence, with that understanding.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 8, was received in evidence.)

MR. ROLNICK: I propose the following stipulation of fact: That the Union has been a collective bargaining representative of the employees at the Magnavox Plant at Greeneville, Tennessee for the past sixteen years. On May 21, 1970, the Union requested permission from the Manager of Industrial Relations to distribute literature at the time clocks. On May 22, the employer denied permission to that.

[15] TRIAL EXAMINER: Do you so stipulate, Mr. McPherson?

MR. McPHERSON: We would so stipulate.

MR. JANETZKE: The Charging Party cannot enter into that stipulation. I would propose this stipulation, that on May 21, 1970, the I-U-E and Its Local 796 re-

quested permission to distribute literature on Company property in the time clock area on May 22, 1970 the Employer gave a denial saying positively or not saying positively that the request was denied, that the request was renewed by the Union, the International and the Local on June 11, 1970 and on June 12, 1970 the positive denial or refusal was given. Thereafter, the request was given on December 3 and again on December 3, the request was denied.

TRIAL EXAMINER: Mr. Rolnick, do you agree with Mr. Janetzke's stipulation proposed in substitution of your own?

MR. ROLNICK: Yes.

MR. McPHERSON: The Respondent would not agree to that.

TRIAL EXAMINER: Very well then, the matter is not stipulated.

MR. ROLNICK: Then perhaps Mr. McPherson could propose a stipulation that would be acceptable.

MR. McPHERSON: We would not propose a stipulation at all. May we go off the record?

TRIAL EXAMINER: Yes, off the record.

(Discussion off the record.)

[16] TRIAL EXAMINER: Back on the record.

MR. ROLNICK: I propose the following stipulation: That on May 21, 1970 the Union requested permission from the Manager of Industrial Relations to distribute literature at the time clock and at a later date permission was denied.

TRIAL EXAMINER: Will you gentlemen so stipulate?

MR. McPHERSON: We so stipulate.

MR. JANETZKE: We so stipulate.

TRIAL EXAMINER: Very well, that stipulation is received. All right, anything further?

MR. ROLNICK: That concludes the stipulations as to Exhibits and facts and the General Counsel rests.

TRIAL EXAMINER: Does the Charging Party have any evidence to offer?

MR. JANETZKE: The Charging Party has none at this time.

TRIAL EXAMINER: Mr. McPherson, do you have a witness you want to call?

MR. McPHERSON: The Respondent will call as it's first witness, Mr. Bryan Sites.

Whereupon,

BYRAN D. SITES

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated, please.

[17] DIRECT EXAMINATION

Q (By Mr. McPherson) State your name, please?

A Byran D. Sites.

TRIAL EXAMINER: How do you spell your last name?

THE WITNESS: (Spelling) S-I-T-E-S.

TRIAL EXAMINER: Thank you.

Q (By Mr. McPherson) What is your occupation, Mr. Sites?

A Director of Industrial Relations for The Magnavox Company of Tennessee.

Q How long have you held that position?

A Seventeen years.

Q And, what function do you perform in your capacity as Director of Industrial Relations concerning Contract Negotiations with Unions at the facilities under your jurisdiction?

A Chief Company Negotiator for Labor Contracts and for the Magnavox Company of Tennessee, all it's facilities.

Q Would you name what those facilities are?

A I meant for all Organized Facilities, of course. We have facilities in Greeneville, Tennessee; Johnson City, Tennessee; Morristown, Tennessee; Jefferson City,

Tennessee; Ardon, North Carolina; Andrews, North Carolina; Flora, Mississippi—

TRIAL EXAMINER: Excuse me one moment. In that last stipulation which was offered as part of General Counsel's [18] case, as originally stated the stipulation included a statement that the Union had been the Collective Representative for the employees in this Plant for sixteen years, is that included in the restatement of the stipulation?

MR. ROLNICK: I think it should be.

MR. JANETZKE: No objection.

MR. McPHERSON: It should be stipulated that have represented these employees at the Greeneville facility.

TRIAL EXAMINER: The past sixteen years?

MR. McPHERSON: The past sixteen years, would that not be correct, Mr. Sites?

THE WITNESS: Yes, that is correct.

TRIAL EXAMINER: They have been the Collective Bargaining representative for those employees?

MR. McPHERSON: Yes.

TRIAL EXAMINER: Very well, I just wanted a clearing up on that, I'm sorry for the interruption.

MR. McPHERSON: That's quite all right.

TRIAL EXAMINER: Proceed.

Q (By Mr. McPherson) Do you have a facility located at Greeneville, Tennessee?

A Yes.

Q Is that facility organized?

A Yes.

Q What is the Union that represents those employees?

[19] A It is the I.U.E.-A.F.L.-C.I.O.-C.L.C. Local 796.

Q And that Union has represented the employees that part—for the past sixteen years?

A That is correct.

Q Have you been involved in the negotiations of the Collective Bargaining Agreement involved with this facility?

A Yes.

Q Where was that first facility first located?

A I'm not sure I understand your question.

Q Well, you now have Plant No. 3 where most of the bargaining union employees are located, is that correct?

A Yes.

Q How long have they been at what we call Plant No. 3?

A Since 1963, I believe.

Q Where is Plant No. 3 located?

A Plant No. 3 is located on the Snapps Ferry Road, Northeast, the far Northeast corner of the town.

Q Does the Greeneville facility at this time have an additional building where bargaining unit employees are located?

A Yes, sir we have bargaining unit employees at Plant No. 2 which is approximately two miles Southwest of Plant No. 3, also on the Snapps Ferry Road.

Q Those are the only two locations where bargaining unit employees are at work, is that correct?

[20] A That is correct.

Q Now, when did the Union first become the representative of the employees?

A As I recall, the election was held in December of 1960—It was held in 1954, certification either the end of December or in January, possibly January of 1955.

Q Were you involved in the contract negotiations with the Union, involved in the first contract?

A Yes, I was.

Q When did that take place?

A During the early spring of 1955.

Q Now, as part of those negotiations, did the Union make various proposals to you and you made counter-proposals to them?

A Yes.

Q At the time of those negotiations, did the Company have in effect a no-distribution rule?

A Yes, sir.

Q Would you state what that rule was?

MR. JANETZKE: I have an objection on this rule.

TRIAL EXAMINER: Is a copy of the rule available?

MR. McPHERSON: I believe that it is, yes. Could we have this marked as Respondent's Exhibit No. 1?

TRIAL EXAMINER: Yes, would the Reporter so mark it so that we may discuss it if Counsel desires?

[21] (The document above referred to was marked Respondent's Exhibit No. 1 for identification.)

Q (By Mr. McPherson) Mr. Sites, I hand you what has been marked as Respondent's Exhibit No. 1 and ask you to identify it please, tell us what it is?

A Yes, this is a Page 18 of the Employee Handbook which was in effect, first issued in 1953 and in effect at the time immediately preceding the contract, the negotiation of the first contract.

Q Was this in effect at the time of the negotiations of the first contract?

A Yes.

Q During the negotiations of that first contract?

A Yes.

Q And, does that state on page 18 what the Company rule was concerning Handbills?

A Yes.

Q Would you tell us what that was, please?

A "You are asked to refrain from distributing notices or handbills in the parking lots or on other Company property".

Q Now, at the time that negotiations were going on, did the Company make a proposal concerning the right to issue rules and regulations?

A Yes, sir. We did and it was settled.

[22] MR. McPHERSON: We ask that this be marked Respondent's Exhibit No. 2?

TRIAL EXAMINER: Okay.

(The document above referred to was marked Respondent's Exhibit No. 2 for identification.)

MR. JANETZKE: May I request that the Charging Party be supplied a copy of these Exhibits that you have had marked?

MR. McPHERSON: Yes.

TRIAL EXAMINER: I hope that everybody has a copy.

Q (By Mr. McPherson) Would you state what that is please, what has been marked as Respondent's Exhibit No. 2?

A This is a copy of the proposal made by the Company to the Union, Article 12, Item General.

Q And does that—excuse me?

A This was the 1955 proposal for the initial contract.

Q Now, this is the first contract that's being negotiated between the parties, is that correct?

A Yes.

Q Now, on that proposal, is there a proposal concerning rules and regulations?

A Yes sir, there is.

Q Would you state what that is, please?

A The Company will from time to time issue Rules and Regulations for the maintenance of orderly conditions on Plant property. These rules will not be of a discriminatory [23] nature.

Q Now, was that provision accepted by the Union as stated there?

A No, sir.

Q Would you relate to us please what transpired concerning that paragraph?

A The Union first suggested a—

MR. JANETZKE: Mr. Trial Examiner, I'm going to object to these unless we can have some dates when this occured. There is no possible way the General Counsel Union could do this unless we have some idea when this occured and who was present, the proper foundation is laid.

TRIAL EXAMINER: I think the objection is well taken.

Q (By Mr. McPherson) All right, when did these discussions occur, Mr. Sites, concerning this?

A These discussions occured during February and March of 1955 meeting between the Company negotiating team and the Union negotiating committee here in Greeneville.

Q Who was on the Company negotiating team at that time?

A Mr. George McClaren and myself.

Q Who was on the Union negotiating team?

A I would have to refer to my notes to be complete on it, but it included Estelle Hinsley—

MR. JANETZKE: I'm sorrey, I missed that.

THE WITNESS: Estelle Hinsley, Trixie Edwards, J. C. [24] Ward, Naomi Hinsley, Mr. Ed Lingo was there, the International Representative.

Q (By Mr. McPherson) Mr. Lingo was the International Representative?

A And Mr. Norcross was also an International Representative and there was a Cristopherson who participated in some of the meetings who was also an International Representative at that time.

Q Who was the chief spokesman for the Union of that negotiating committee?

A That would be hard to say because we went through about three or four different ones in the process of negotiations of that contract. At various times different ones; it seems to me that Mr. Norcross started out and a Mr. McGill I believe was the final negotiator and in between these various others.

Q Now, sir as to this Company proposal on Section 3 of Article 12, General, would you relate what transpired concerning that section?

MR. JANETZKE: I have an objection. He hasn't testified that he was present in any of these, I think it's still objectionable.

MR. McPHERSON: I think he stated that he was present.

TRIAL EXAMINER: He stated that he was present for the original or Mr. McClaren, I believe was present for the [25] Company or both he and Mr. McClaren were present, so it is not hearsay.

MR. JANETZKE: He didn't say he was present for the Union. He's making a statement—

TRIAL EXAMINER: We have a statement of who was present for the Union, the witness testified to that. Now, we realize this was several years ago, who said what for the Union, it's not easy.

THE WITNESS: It would be very difficult to remember who made the statement. I have had various notes

of what was said, but to identify them to particular individuals, I don't believe I could.

Q (By Mr. McPherson) Are you testifying as a result of your notes to refresh your recollection?

A Yes, I am.

Q Do your notes indicate as to what statements the Union made or what statements the Company made about this?

A Yes, sir. And, as a matter of fact, this sheet was one of my worksheets and I have some of my notations on it.

TRIAL EXAMINER: The "Sheet" the witness and —the sheet is Respondent's Exhibit No. 2?

THE WITNESS: That is correct.

MR. McPHERSON: May he continue, Mr. Trial Examiner?

TRIAL EXAMINER: Yes, he may continue.

THE WITNESS: In the discussion of the rules, the [26] question—the Union raised the question of, or the proposal of a negotiating of the rules and making them a part of the contract and the Company opposed this feeling it was not the best way to establish rules but rather that the Company should take this action, make the rules and the Union should have the right to protest if they felt they were discriminatory type rules. The, they suggested, then they asked if we had intentions of making additional rules beyond what were in the Employee Handbook which was in effect at that time, at which time they had a copy of it. At a subsequent meeting a few days later, we advised them we had no immediate plans for any change in the rules. However, by our proposal that we would still have the right to make the changes when circumstances dictated it. They then asked, said well, there might be rules which would be not perhaps discriminatory but unfair rules and so we in turn said that we had no objection to adding an unfair along with discriminatory, so that they also could on either basis, they could be protested by the Union if they disagreed with the rules that we put forth and on this basis, we reached an agreement approximately March 7th or 8th, I'm not sure which of those dates it happened on this particular clause.

MR. McPHERSON: We request that this be marked as Respondent's Exhibit No. 3.

TRIAL EXAMINER: Okay.

[27] (The document above referred to was marked Respondent's Exhibit No. 3 for identification.)

Q (By Mr. McPherson) Mr. Sites, I had you an instrument which has been marked as Respondent's Exhibit No. 3 and ask if you can tell me what that is?

A Yes, this was the Revision, Revised Proposal with —which we submitted on March 8, 1955 to the Union permitting—

Q And, does that have the proposal concerning the making of rules and regulations?

A Yes, sir. And, this was added in pencil in my writing. The portion that I added was "Unfair Or" which was the part they still agreed—disagreed but then my notes indicated it was agreed on.

Q Was this additional, the "Unfair Or" to the proposal, is that correct?

A That's correct.

Q Your handwritten notes indicate that that was agreed to on that day, is that correct?

A Yes, sir. And, I might say it would show that it was agreed to and submitted on March 8th to the best of my recollection, we did resolve it on the same day.

Q You stated that during the discussion concerning this, the Union specifically asked if the rules of conduct which the Company was putting into effect, were the rules of [28] conduct currently in existence instead of in the Handbook, is that correct?

A Yes, sir.

Q Now Mr. Sites, what was the duration of that first contract?

A One year. I believe it expired April 30, 1956.

Q Would you state whether or not there was a decertification election held in 1956?

A Yes, there was.

Q And, when was that election held?

MR. ROLNICK: Objection, that is irrevelant here.

TRIAL EXAMINER: Is this another election after the first one?

MR. McPHERSON: Yes, sir. The Certification.

TRIAL EXAMINER: The decertification, I will permit it, subject to objection if it's not connected up then we may make a motion to strike.

Q (By Mr. McPherson) Mr. Sites, when was that decertification Election held?

A March 21, 1956.

Q Now, as a result of the decertification situation, did you have an occasion to get a telephone call from Edward F. Lingo, International Representative for the Union?

A Yes, sir.

Q The same Mr. Lingo involved in the contract negotiations?

[29] A Yes, sir. He was the International Representative servicing the Union, the Local Union at that time, the man with whom the Company was dealing.

Q And, what was the nature of that conversation?

A He called me, I believe it was on March 15, 1956 and with a violent objection that the committee inside the Plant attempted decertification as being permitted to distribute propaganda materials inside the Plant.

Q Did he point out to you that this was against Company rules?

MR. ROLNICK: Objection, for the leading nature.

TRIAL EXAMINER: The question is leading, Counsel.

MR. McPHERSON: All right, I will rephrase it.

Q (By Mr. McPherson) What did he state concerning that situation—

MR. JANETZKE: I have an objection. There's no establishment that Mr. Lingo is an agent of the International Union of Electrical and Machine Workers, no establishment of that.

TRIAL EXAMINER: The witness had identified him as an International Representative.

MR. JANETZKE: I submit to the Trial Examiner that Mr. Lingo had never been employed by this International Union.

TRIAL EXAMINER: This is a matter for you to bring out in your rebuttal.

* * * *

[32] THE WITNESS: To clear you—up the record, I was advised by Mr. Lingo and various other people representing the I.U.E. if Mr. Lingo was employed by the C.I.O. and not by any specific International. However, he was assigned as the Acting International Representative through the period of organization and the first contract, the negotiation and administration of the first contract here at Greeneville. So, to say that he [33] was not directly an employee of the I.U.E. possibly is true technically. However, he was loaned to the I.U.E. in serving that capacity at that time.

MR. ROLNICK: I would object to the last answer and move to strike unless Mr. Sites can explain who the various other people were.

TRIAL EXAMINER: I was going to ask who identified Mr. Lingo to you as being a representative of the C.I.O. and authorized to speak for the Union?

THE WITNESS: Mr. Norcross, Mr. Chet Barker and Mr. John Sullivan.

Q (By Mr. McPherson) Who are they?

A Mr. Norcross was an International Representative who identified them, representing himself to me to be of the I.U.E. and. Mr. John Sullivan, now an employee of the Magnavox Company and formerly an official of the I.U.E.?

Q What was his position with the I.U.E.?

A Well, his final position I believe was Assistant Secretary-Treasurer and the Local Union officials advised me that he was their spokesman.

Q Who you mean by "He"?

A That Lingo was their Representative, that would have been Mr. Henry Darren who was President at that time, Estelle Hinsley to name two.

MR. McPHERSON: Mr. Trial Examiner, I think that will [34] sufficiently clarify the situation to make this testimony pertinent at this point.

TRIAL EXAMINER: I think the evidence is admissible. The General Counsel and Charging Party of course,

will have the opportunity to rebut any evidence if he so desires.

MR. McPHERSON: May we proceed, sir.

TRIAL EXAMINER: You may.

MR. JANETZKE: One other thing, we still have the question of not raising affirmative defense in the pleading.

TRIAL EXAMINER: I realize that, but the Board's pleadings are not as precise, your comment on the pleading, if you complain surprise, I will give you time to obtain such rebuttal testimony as you desire in any reasonable time.

MR. ROLNICK: Your Honor, I believe recent Board's decisions, the Respondent is required to raise an affirmative defense if time—if it has one and that the General Counsel need not claim surprise and the testimony should not be admitted.

TRIAL EXAMINER: Do you have the authority to that?

MR. ROLNICK: I would site a plea, I do not have it with me at the moment. It is a recent case.

TRIAL EXAMINER: I would be glad to see what authority you have; I would consider the matter and you may send it to me.

MR. McPHERSON: May we proceed?

[35] TRIAL EXAMINER: Please do.

Q (By Mr. McPherson) Would you state what the conversation was with Mr. Lingo?

A Mr. Lingo was claiming that contrary to our previous policies and rules, we were permitting people to pass out materials in the Plant urging the people to vote against the Union in the upcoming Decertification Election and at the same time we had renewed certain—that we had removed certain employees from the parking lot who were distributing Union material to the cars on the parking lot.

I advised him that, to my knowledge, there was no such violation of the rules within the Plant that we would not permit employees within the Plant to be distributing materials of any kind for or against the Union in the upcoming election and that I would see that everybody

was properly advised that this was not to be permitted.

Q And, did you later receive from him a letter confirming the conversation or referring to it?

A Yes, the same day I received a letter from him confirming the conversation that had taken place and restating his demand that equal treatment be given.

MR. McPHERSON: I request that this document be marked as Respondent's Exhibit No. 4.

TRIAL EXAMINER: Okay, would the Reporter so mark the document so that it may be discussed further?

[36] (The document above referred to was marked Respondent's Exhibit No. 4 for identification)

Q (By Mr. McPherson) Would you state what that is please, what has been marked as Respondent's Exhibit No. 4?

A This is a copy of the letter which I received from Mr. Lingo at the time.

Q Is that the letter you referred to as, referring to your conversation?

A Yes, this is the letter.

Q Did you reply to that letter?

A Yes, I did reply.

MR. McPHERSON: We ask that this be marked as Respondent's Exhibit No. 5?

TRIAL EXAMINER: Okay.

(The document above referred to was marked Respondent's Exhibit No. 5 for identification.)

Q (By Mr. McPherson) I hand you what has been marked as Respondent's Exhibit No. 5 and ask you to tell me what that is, please?

A It is the—

MR. JANETZKE: Mr. McPherson, I'm lost on these. What is No. 4?

MR. McPHERSON: It's a letter to Mr. Sites from Mr. Lingo.

MR. JANETZKE: What is your No. 3?

[37] MR. McPHERSON: It's the revised proposal the Respondent agreed to.

MR. JANETZKE: Thank you.

Q (By Mr. McPherson) Would you state what Respondent's Exhibit No. 5 is?

A This is a letter I sent to Mr. Lingo on March 15, 1956.

Q What does it state?

A Do you want me to read it?

Q If you would?

A "Dear Mr. Lingo—

TRIAL EXAMINER: Not necessarily read it, please.

MR. McPHERSON: The letter will speak for itself.

TRIAL EXAMINER: The letter will speak for itself, yes. That is, if you want to introduce it. Excuse me a moment, Mr. McPherson. I didn't call upon the parties to give me any statements or positions. I assume the General Counsel's position is that he stated in the Complaint. However, with regard to objection of the or the failure to allege affirmative defense, I would like to have the record reflect precisely what your position is in the trial or in this case.

MR. McPHERSON: Our position is to whether or not we have committed the Unfair Labor Practice alleged in the Complaint.

TRIAL EXAMINER: To what?

MR. McPHERSON: As to the Complaint, is that what you [38] are requesting?

TRIAL EXAMINER: What is your position?

MR. McPHERSON: We are alleging, that historically, we have had the no-solicitation rule in effect, that this rule has historically for the sixteen year period and has been known to the Union and has been accepted by the Union as a valid rule and has been followed by the Union throughout the sixteen year history and to the formulation of the collective bargaining process and has waived any right that it may have to distribute literature on Company property and that therefore, there is no violation as alleged in the Complaint.

TRIAL EXAMINER: Thank you. Any comments you want to make, General Counsel?

MR. ROLNICK: It appears to General Counsel that there is an affirmative defense being raised which is not being pleaded. I don't think the requirement is that

affirmative defense be pleaded, I'm objecting to that. I'm not claiming surprise.

TRIAL EXAMINER: You are not claiming surprise?

MR. ROLNICK: No.

TRIAL EXAMINER: Is the Charging Party claiming surprise?

MR. JANETZKE: The Charging Party isn't claiming surprise that waiver is alleged, it's the extent of the evidence that's coming on in the waiver is what the surprise appears.

TRIAL EXAMINER: Very well, you may proceed Mr. McPherson.

Q (By Mr. McPherson) You did, during that first negotiation, [39] enter into a collective agreement—collective bargaining agreement, is that correct?

A Yes, sir.

MR. McPHERSON: I ask that this be marked as Respondent's Exhibit No. 6?

TRIAL EXAMINER: Okay.

(The document above referred to was marked Respondent's Exhibit No. 6 for identification.)

Q (By Mr. McPherson) I hand you what has been marked as Respondent's Exhibit No. 6 and ask you to tell us what that is, please?

A Yes, this is the original agreement between Magnavox Company of Tennessee, Greeneville, Tennessee and Local 796 and—which is the Union.

Q Is that the first collective bargaining agreement, that of which you are speaking?

A Yes.

Q Does that collective bargaining agreeemnt contain the rules and regulations provision as shown on Respondent's Exhibit No. 3 which is the revised article which you stated was agreed to?

A Yes, sir.

Q On what page?

A Page 34, Item #3.

Q Now, during that first negotiation, was there also a [40] proposal concerning Union bulletin boards?

A Yes, sir.

Q And, would you relate to us what occurred concerning that proposal during those negotiations?

A The Company made a proposal that we provide bulletin boards for the exclusive use of the Union and there was a discussion of the Company's retaining the right to approve all such notices on or to go on the bulletin board. We added an understanding that such notices would be automatically approved unless they were of a controversial nature. This was done to meet the Union's objectives.

Furthermore, the Union asked that we label these bulletin boards and so we added each bulletin board would be labeled "Local 796"—

MR. JANETZKE: I object to this testimony, it has really no foundation. The witness is testifying to agreements made, no indication of who was there, what dates these agreements were made, there's just no foundation.

TRIAL EXAMINER: The objection is well taken. I think if you are going to go into this conversation as far as the foundation, time and place, I think the witness should indicate who said what.

MR. McPHERSON: May I ask one further question and then I would like to clarify that?

TRIAL EXAMINER: Go ahead.

[41] Q (By Mr. McPherson) Was there an agreement finally reached on the bulletin board as you stated?

A Yes, sir.

Q And, it is included in the collective bargaining agreement?

A Yes.

Q What page is that shown on?

A That is on page 33, Article 12, Section 1 on over on to page 34.

Q That is Respondent's Exhibit No. 6 that you are referring to?

A Yes.

Q Now, was the Union to certify this as a result of the election on March 21, 1956?

A No.

Q Did you enter into such contract negotiations with that Union?

A Yes.

MR. McPHERSON: I request that this be marked as Respondent's Exhibit No. 7.

TRIAL EXAMINER: Okay.

(The document above referred to was marked Respondent's Exhibit No. 7 for identification.)

Q (By Mr. McPherson) Mr. Sites, I hand you Respondent's Exhibit No. 7 and ask you to tell me what that is?

[42] A This is the agreement negotiated between the Company and Local 796 of the I.U.E. dated May 1, 1956. This is a five year agreement expiring 1961.

Q Is that the second collective bargaining agreement that the parties entered into?

A Yes, sir. This is the second one.

Q Does that collective bargaining agreement contain the same ruling and regulations in it's provision pertaining to the first agreement?

A Yes, sir.

Q Was there, during the negotiation any attempt by the Union to change that provision?

A I have no recollection that they made any attempt.

Q Does that provision also contain the bulletin board provision contained in the first agreement?

A Yes, sir it does.

* * * *

[43] Q (By Mr. McPherson) Mr. Sites, if you would please, review the first collective bargaining agreement and the second one and tell me if there were, if there are or were any changes in the rules and regulations?

A Yes, there is a change.

MR. JANETZKE: May we have an indication of what page the witness is looking at?

THE WITNESS: Page 39 of the 1956 agreement and page 34 of the 1955 agreement.

TRIAL EXAMINER: The first one the witness referred to was Respondent's Exhibit No. 7 and the second one referred to was Respondent's Exhibit No. 6.

Q (By Mr. McPherson) What is that change, sir?

A Added to that section was the "Nor will they conflict with the terms of this agreement". As I said

previously, I said to the best of my recollection and my recollection has been aided by the General Counsel.

MR. ROLNICK: Perhaps, in order to clarify the record, the witness first testified, if I am not mistaken, there was no discussion on this provision during negotiations. Perhaps his recollection is refreshed as to whether or not there was?

TRIAL EXAMINER: We'll leave that to Mr. McPherson to inquire if he wants to.

Q (By Mr. McPherson) There was a change in that provision [44] adding that portion which you just read, is that correct?

A Yes, sir.

Q Now, what was the duration of that contract that you are reading?

A Five years.

Q Five year contract, when did that expire?

A April 30, 1961.

Q Was another collective bargaining agreement entered into?

A Yes, sir.

Q Before we go into that, does the second contract, the five year contract that you now have as Respondent's Exhibit No. 7, is it containing any provision for bulletin board uses?

A Yes, it does.

Q Would you compare that to the provision in the first contract?

MR. JANETZKE: May we have an indication of where the witness is reading or going to read?

Q (By Mr. McPherson) What page, Mr. Sites are you going to read from?

A Page 33 of the 1955 agreement.

Q Which is Respondent's Exhibit No 6?

A Article 12, Section 1, Exhibit No. 7, Page 38 of the 1956 Agreement—

TRIAL EXAMINER: I believe we were given the wrong Exhibit Number, weren't we? The 1955 agreement is Respondent's [45] Exhibit No. 6 and the 1956 agreement is Respondent's Exhibit No. 7.

MR. McPHERSON: That is correct.

THE WITNESS: Yes, there was a change, the one in the 1956 agreement.

Q (By Mr. McPherson) What was that change?

A We—the number of bulletin boards was increased from, the bulletin board of each plant to three bulletin boards at each plant, from one to the, three.

Q So, I believe that you said the next contract was entered into in July 1961, is that correct?

A Yes, as I recall we had some extension of the old contract when it was over with.

MR. McPHERSON: We would like to have this instrument marked as Respondent's Exhibit No. 8.

TRIAL EXAMINER: Okay.

(The document above referred to was marked Respondent's Exhibit No. 8 for identification.)

Q (By Mr. McPherson) I hand you what has been marked Respondent's Exhibit No. 8 and ask you to tell me if that is the third collective bargaining agreement?

A Yes, it is.

Q What period of time was that in effect?

A This was for one year, terminating June 30, 1962.

Q Does that contain a provision concerning rules and [46] regulations?

A Yes, it does.

Q Would you find that for us in that agreement, please?

A That would be on page 40—page 47, Article 12, Section 8.

Q Would you compare that with the language contained in Respnodent's Exhibit No. 7?

A Yes, sir. There is no difference between them.

Q No difference in the language concerning rules and regulations?

A That is correct.

Q Does the contract also contain provisions concerning bulletin boards?

A Yes, it does.

Q Would you find that for us please and compare that with the preceding contract?

A Page 47 of Exhibit No. 8, Article 12, Section 1. Yes, sir the 1961 on the bulletin board is deleted. The bulletin boards for Plant No. 1 so that we had no or only three bulletin boards at Plant No. 2, we were no longer using Plant No. 1 manufacturing operation at that time.

Q At that time, all of the employees covered in the bargaining unit located at Plant No. 2, is that correct?

A Yes.

MR. McPHERSON: We would like to have this instrument marked as Respondent's Exhibit No. 9.

[47] TRIAL EXAMINER: Okay.

(The documents above referred to was marked Respondent's Exhibit No. 9 for identification.)

Q (By Mr. McPherson) Mr. Sites, I hand you Respondent's Exhibit No. 9 and ask you if that is the next agreement that was entered into between the parties?

A Yes. This is the next agreement.

Q And, would you please state whether or not that agreement contained a provision concerning the Company's right to make rules and regulations?

A Yes, it does.

Q State where it is, please?

A On page 49 of Exhibit No. 9, Section No. 3.

Q Would you compare that with the language in the preceding contract?

A The language is the same.

Q Now sir, does that also contain a provision for the bulletin boards?

A Yes sir, it does.

Q Would you state what that language is, please?

A On page 48, Article 12, General, Section 1 and this was changed to again to put the bulletin boards in Plant No. 1. We were again using Plant No. 1 at that time as a manufacturing facility therefore provided them with two bulletin boards. It was not to the same extent as previously allowed [48] though, with three bulletin boards. Other than that, the provision is the same.

MR. McPHERSON: We request that this instrument be marked as Respondent's Exhibit No. 10.

TRIAL EXAMINER: Okay.

(The document above referred to was marked Respondent's Exhibit No. 10 for identification.)

Q (By Mr. McPherson) Mr. Sites, I hand you Respondent's Exhibit No. 10 and I ask if that is the next collective bargaining agreement?

A Yes, this is the next agreement.

Q Does that contain a provision concerning rules and regulations?

A Yes.

Q Would you compare that to the language in the preceding agreement, please?

A Yes. Page 53, Section 3, Article 12—

MR. ROLNICK: Your Honor, the documents speak for themselves. As far as the changes go, I'm not sure if I understand the Respondent's position as far as the waiver as to whether there were discussions during negotiations or whether his position is based purely on what is written in the document. If it is, then the documents speak for themselves.

TRIAL EXAMINER: The documents obviously speak for themselves. He's not soliciting any evidence or discussion in [49] negotiations as I understand it. Am I right? Other than, well, the documents speak for themselves, but it is all right for the witness to point out where the language is so that we can read it into the record.

MR. McPHERSON: That's the sole purpose of it.

TRIAL EXAMINER: So that the Board would not have to look for all this for their ruling.

THE WITNESS: This section is the same in Exhibit No. 10 as in Exhibit No. 9.

Q (By Mr. McPherson) Does that also contain, Respondent's Exhibit No. 10, also contain language concerning bulletin boards?

A Yes, it does. Article 12, Section 1, page 53.

Q Any change in that language?

A Yes, there was a reduction from two bulletin boards to one bulletin board at Plant No. 1 and the addition of three bulletin boards in Plant No. 3. We had moved into new Plant No. 3 during this period so the provision

was made for the bulletin boards for that Plant. Other than that, the provisions are the same.

* * * *

[50] Q (By Mr. McPherson) I now hand you General Counsel's Exhibit No. 5 and ask if this is the next collective bargaining agreementt hat has taken place that followed Respondent's Exhibit No. 10?

A Yes, this is the current agreement.

[51] Q Does that contract contain a provision concerning the Company's right to make rules and regulations?

A Yes.

Q And, where does that appear?

A On Page 59, Article 12, Section 3.

Q Does it also contain a provision providing for the bulletin boards for the Union?

A Yes, sir. Article 12, Section 1, beginning on page 58.

Q Mr. Sites, throughout the period of time, in the sixteen year history of representation of the bargaining unit of the employees by the Union, has the Company had in effect a no-distribution rule shown on Respondent's Exhibit No. 1?

A Yes, sir.

Q Has there been any variation in the application and interpretation of that rule, to your knowledge?

A I think there was one variation that I recall, by special permission.

MR. JANETZKE: By what?

THE WITNESS: By special permission.

MR. ROLNICK: Your Honor, I must, once again, lodge an objection. I know this probable or properly can come up in cross examination, but I move—I'm a little confused. The question was whether the rule on Respondent's Exhibit No. 1 has been in existence sixteen years and yet there has been a stipulation as to General Counsel's Exhibit No. 6. It appears [52] there is some conflict between the two. Now, we are asked about interpretation of them. I don't see how the witness can answer the question without referring to Respondent's No. 1 and General Counsel's No. 6.

MR. McPHERSON: I think he is quite capable of remembering what Respondent's Exhibit No. 1 is when I referred to is or to it as the Handbook and he states that rule has been in effect throughout—

TRIAL EXAMINER: Beg your pardon?

MR. McPHERSON: He states here that the rule has been in effect throughout the history—

TRIAL EXAMINER: You are now referring to Respondent's Exhibit No. 1?

MR. McPHERSON: That's correct.

TRIAL EXAMINER: The one about the "Handbills", is that the one you are talking about?

MR. McPHERSON: That's correct.

TRIAL EXAMINER: Which reads "You are asked to refrain from distributing notices or handbills on Company property", this is taken from the handbook?

MR. McPHERSON: That is correct.

TRIAL EXAMINER: That's 1953?

MR. McPHERSON: That is correct.

MR. ROLNICK: My point, Your Honor, is that Respondent's Exhibit No. 1 is capable of several interpretations, one of [53] which being that it is permissive. I don't think there is or I don't see anything permissive about rule here in General Counsel's Exhibit No. 6 and I think that there is a conflict between the two.

TRIAL EXAMINER: I think that's a matter for cross examination.

Q (By Mr. McPherson) Mr. Sites, state whether or not throughout this period of time we prohibited the distribution of literature on Company property?

A Yes, we did.

Q Had there been any change in our rule in this regard throughout the sixteen year history?

A No, sir.

Q This rule was uniformly enforced, I think you said except for one situation that you recall, is that correct?

A Yes.

Q What was that one situation?

A The Union came to us requesting special permission to distribute materials—

MR. JANETZKE: Mr. Trial Examiner, I'm sorry to interrupt, but we are getting leading questions again with no foundation, leaving no foundation as to date, time and place. There's just no possibility of our—it's been gone over and over again.

MR. McPHERSON: I plan to raise this through another witness who I think would be more appropriate than through Mr. [54] Sites.

Q (By Mr. McPherson) You were not directly involved in this, were you?

A No.

Q This is the "City of Hope" situation?

A Yes.

Q That doesn't involve a distribution by the Union, is that correct?

MR. JANETZKE: I object. The witness was not involved.

TRIAL EXAMINER: The question of the witness is not the best evidence on the subject. The witness admittedly was not involved in the matter. Counsel has indicated he will attempt to prove it through another witness.

MR. ROLNICK: Your Honor, Mr. McPherson has the stipulation as to the acception on the date and the matter on which the permission was given for the "City of Hope". I will stipulate with him. I can't see a factual matter here that's not to be disputed, let's just stipulate to that.

TRIAL EXAMINER: Do you want to stipulate?

MR. McPHERSON: I don't think there would be any problem in that regard, but I can't anticipate that. I would rather prove it through my witness.

TRIAL EXAMINER: Very well. You may do so.

Q (By Mr. McPherson) With that one exception that you recall, state whether or not the rule has been uniformily [55] applied?

A Yes.

Q And, literature has been prohibited from distribution on Company property, is that correct?

A Yes.

Q Throughout the sixteen year history, has the Union ever filed a grievance alleging that that rule has been unfair?

A No, not to my knowledge.

Q Throughout the history of negotiations with the Union through these various collective bargaining agreements, has the Union ever raised, in negotiations, the question, have they ever tried to change through negotiations the Company's no-distribution rule?

A I have no recollection that they ever did.

Q And, Mr. Sites, to the best of your recollection or to the best of your knowledge, at the moment that is, is there any attempt being made to oust this Union by employees in the bargaining unit?

MR. ROLNICK: Objection, it's immaterial and irrelevant.

TRIAL EXAMINER: Sustained.

MR. McPHERSON: I disagree. I think it is material. May I be heard?

TRIAL EXAMINER: Yes, you may.

MR. McPHERSON: The Board and the Courts have ruled, General Motors and Gale Products to be precise, that on [56] situations where an organizational attempt by another Union was being made, or where certain occasions are involved, my point is, here there is no organizational effort by any other Union nor is there any effort to be decertified this Union by the employees, at least to our knowledge. Therefore, we are not involved in the normal no-solicatation, no-distribution situation that is controlled by those cases and I believe that it's pertinent to any finding made by the Board, that is to as to whether, if it should go as far as the Courts, as to organizational activity was in existence at that time.

MR. JANETZKE: It couldn't happen, possible to have a Petition pending at the present time.

TRIAL EXAMINER: Until the Charging Party and General Counsel produces evidence to the effect that there is a new decertification effort, the whole issue is moot as far as we're concerned and we had the normal situation, why—

MR. McPHERSON: The normal situation, Mr. Trial Examiner, is the organizational attempt, the normal situation is not what we have here and I think that is most pertinent to the distinctions between this case and Gale Produces and Stoddard Quirk and Babcock-Wilcox and the whole line of cases, we are not involved in that context or in that situation and therefore, it is our position that those cases do not apply.

MR. ROLNICK: Your Honor, my objection to immateriality was that this Complaint alleges that the Respondent, by [57] maintaining an enforcement of it's no-distribution rule, is attempting to take away a right of the employees which exist, which is a statutory right, and unless there has been a waiver or unless there are special circumstances proved, it violates the law, very simple. Therefore, whether or not there has been an effort to decertify this Union is immaterial to the issue framed by the General Counsel's Complaint.

MR. McPHERSON: That is not the position taken by either the Sixth Circuit Court of Appeals which has jurisdiction over this case or by the Seventh Circuit Court of Appeals, nor by the Fifth Circuit—

MR. JANETZKE: Is the Employer maintaining that there was a decertification effort, that the Union would have the right to distribute literature on Company property?

MR. McPHERSON: No, sir. We are not. We are saying that the change of circumstances which is revealed that remain to this case.

MR. JANETZKE: It doesn't make any difference whether it's a decertification case or not. The Union has a right to distribute literature, how could that possibly be the issue?

MR. McPHERSON: You're getting into an issue of Union rights as opposed to Employees rights to oust and decertify bargaining representatives, my point being that the right of the employees does not involve, is not involved in this case as opposed to the rights of the Union.

[58] MR. ROLNICK: It would be the same thing if the Union rights were the ones involved. Again, the question is immaterial. The Union has a right under the

statute unless it is resting, has waived it's right to distribute literature.

TRIAL EXAMINER: Unless the Union or General Counsel introduces evidence or produces evidence of a decertification effort or an attempt by another Union to get into the Plant, I would assume that that situation does not exist. It is not necessary for you to prove a negative. We will assume, on the basis of the existing contract, that that situation does not exist, but if you want to argue in your brief, that Stoddard case and the others mentioned are not applicable because there was a decertification petition involved there, you can offer it without proving the existence, proving that such a situation was not existing in this case.

MR. McPHERSON: Very well. I will be content with that. I would like for the record to reflect that I have attempted to show that there was no organizational activity going on at the Plant.

TRIAL EXAMINER: You are making an offer of proof? Is that what you are saying?

MR. McPHERSON: My offer of proof would be that Respondent stands ready to show that there is no organizational activity at it's facility represented by this Union, there is no organizational effort by any other Union at it's facility, [59] now apparently under way to decertify or oust this Union as a representative of the employees in the bargaining unit.

TRIAL EXAMINER: Counsels, what do you say to the offer of proof? Do you want to object to it?

MR. ROLNICK: I object to it on the immateriality of it.

TRIAL EXAMINER: I will sustain the objection and reject the offer of proof.

MR. McPHERSON: I have no further questions of this witness.

TRIAL EXAMINER: Counsel, you haven't offered your exhibits in evidence. Do you want to introduce those at this time?

MR. McPHERSON: I might as well do that now, prior to cross examination. At this time we would offer

into evidence Respondent's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.

* * * *

[63] TRIAL EXAMINER: Respondent's Exhibits Nos. 1 thru 10 are received into evidence.

(The documents above referred to, heretofore marked Respondent's Exhibit Nos. 1 thru 10, were received in evidence.)

TRIAL EXAMINER: Respondent's Exhibit Nos. 2 & 3 are received without reference to the handwriting in the margins. That will be disregarded. The only handwriting that will be considered are the words "of Unfair Order," in Respondent's Exhibit No. 3, under Paragraph No. 3. All other handwriting is to be disregarded.

Now, with regard to Respondent's Exhibit Nos. 4 & 5 to which objection has been made, I receive those into evidence and of course, General Counsel and the Charging Party have a right to present evidence as to the power of authority of Mr. Lingo to represent the Union. However, I note that the Respondent's Exhibit No. 4 is on the letterhead of the Union, which creates some presumption that he was acting on behalf of the Union, which is also a subject for rebuttal. Very well, you may Cross-Examine.

[64] CROSS-EXAMINATION

Q (By Mr. Rolnick) Mr. Sites, would you please refer to Respondent's Exhibit No. 6, which I believe is the contract dated May 1, 1955? With respect to the negotiation that proceeded a signing in Respondent's Exhibit No. 6, was there any mention in those negotiations of Page No. 18 or Respondent's Exhibit No. 1, a rule in which you are asked to refrain from the distributing of notices or handbills in the parking lots among other— or on other Company property? Is there any specific mention of that clause during the negotiations?

A You are referring to which one?

Q Respondent's Exhibit No. 1?

A Not since—

Q No, referring to Respondent's Exhibit No. 1 on handbills. Was there any mention of that preceding the signing of Respondent's Exhibit No. 6?

A I have no recollection of specific mention, no.

Q Can you testify that this rule was shown to the Union referring once again to Respondent's Exhibit No. 1?

A I can only testify that the Union had these handbooks in their possession during the negotiations and had them present at the bargaining table.

Q With reference to the full booklet, Respondent's Exhibit No. 1 of which Page No. 18 is in evidence as Respondent's [[65] Exhibit No. 1, I should say, was this given to all employees?

A That was the policy, yes, sir.

Q Can you state that all employees had a copy?

A We've got several thousand employees. I don't think I can unequivocally state that every single employee had one. However, the great propounderance of employees did have one, and all employees had access to this instrument.

Q When you say "access", where was the access?

A To the street approaching their department or through their immediate supervision. All of them had copies of it.

Q An employee, if he wanted a copy of it and his immediate supervisor did not have a copy of it, would he have to go to the Personnel Office to get a copy there? Would he know to do that?

MR. McPHERSON: I object to that as conjecture, Your Honor, on what the employee would have done. He has testified as to what the Company policy was and they distributed the handbook. I believe he has testified that anything beyond that, is beyond his knowledge.

TRIAL EXAMINER: I'll sustain the objection.

Q (By Mr. Rolnick) Was there any discussion preceding the signing of Respondent's Exhibit No. 6, that Respondent's Exhibit No. 1, the provision about handbills might be unlawful?

A I'm sure there was none. I don't recall any.

[66] Q When you received the telephone call from Mr. Lingo, March 19, 1956, was there any discussion during this telephone conversation that the rule was unlawful?

A No, sir.

Q Did you prepare the letter dated March 15, 1956, which is Respondent's Exhibit No. 4?

A You say did I correct—

Q Did you receive it?

A Yes.

Q I'm sorry, did you prepare Respondent's Exhibit No. 5 is what I meant to ask?

A Yes, I did.

* * * *

[68] Q (By Mr. Rolnick) With regard to the negotiations preceding the signing of Respondent's Exhibit No. 6, was anything said during those negotiations by or about that by entering into Articie XII, Section No. 1, or Article XII, Section No. 3, the Union was waiving its right to distribute literature on Company property?

A Specifically, no.

[69] Q Am I correct, sir, that the contract does not contain any expressed provision prohibiting Union distribution on Company property?

A Specific provision, no, it is not.

Q Just to speed this up, in any negotiation, has there ever been—has it ever been expressly mentioned why the parties that by entering into Article XII, Section Nos. 1 & 3, the Union was waiving its right to distribute literature on Company property?

A No, only that the Company had the right to make rules.

Q Referring to Respondent's—The context in Respondent's Exhibit Nos. 6 thru 10, any of those contracts an expressed provision that the Union was waiving its right to distribute literature on Company property?

A No, specific statement at that time.

Q You testified that the last sixteen years the handbilling provision, Respondent's Exhibit No. 1, has been in existence, is that correct?

A Would you ask that once more?

Q Has that provision been in existence for the past sixteen years?

A To say that the provision has been in existence, is a difficult question to answer, but the rule has been in existence.

Q Has the rule been contained in the same employee handbook [70] for the past sixteen years?

A Yes, it has. However, we have not continued to distribute this handbook.

Q When did you stop distributing this employees handbook?

A About the time that the Union was certified.

Q As I understand your testimony then, since the time the Union has been certified, you have maintained an employee handbook in your Personnel Office, but you have not distributed this to your employees?

A We have maintained copies of this book. However, we have not distributed this book as a current employee handbook, no.

Q Is there another employee handbook?

A No, sir.

Q If an employee—Have you hired any employees in the last year?

A Yes, sir.

Q Are these employees made aware of the Respondent's Exhibit No. 1?

A No, sir, we have not distributed this since 1955.

Q Can I assume that the Respondent's Exhibit No. 1 has remained in dormant since 1955?

A Exhibit No. 1 handbook, yes, sir.

Q Thank you. When did you formulate—

MR. McPHERSON: I would like a classification of the [71] handbook, the rule has been going on, is that not correct?

MR. JANETZKE: I am going to object to Counsel giving the witness the answer. That's highly prejudicial.

TRIAL EXAMINER: Just a moment. I understand that the testimony of the witness, that the book has not been distributed and this book has apparently been dormant. Nothing was said about the rule.

Q (By Mr. Rolnick) In the last fifteen years of the hiring of employees, do you inform him of that rule as it is written on Respondent's Exhibit No. 1?

A No, sir.

Q Is there any effort to acquaint an employee with that rule that is contained on Respondent's Exhibit No. 1?

A No, sir.

Q When did you first draw up the plant rules listed as General Counsel's Exhibit No. 6?

A We have had rules of this nature—I guess, since 1947, not this specific list, but there have been changes from time to time when this particular list was formulated. I can't really say.

Q How long have you had rules such as contained on General Counsel's Exhibit No. 6? How long has that been in existence?

A Well, I am speaking without reference to data. The best I can remember it has been there for many years, at least fifteen years.

[72] Q Was it in existence prior to the Union certification?

A Yes, sir.

Q Did you call this rule to the Union's attention during the negotiations of the first contract?

A Not specifically, no, sir.

Q At any time during the negotiations of the contract, did you call the Union's attention to the existence of rules such as contained on General Counsel's Exhibit No. 6?

A Only in the manner that we advised the Union that we had no—No, we did not anticipate making any changes in the rules following the negotiations of the contract.

Q In other words, am I correct in assuming that during the negotiations beginning with the first contract and up to this last contract, there has been no mention by either party at any time about rules such as contained in General Counsel's Exhibit No. 6?

A I don't recall if we discussed any of the rules during negotiations other than the first negotiation, when those questions were asked.

Q Now, you say that you uniformly applied your rule concerning the distribution of literature on the Company property, is that correct?

A To the best of my knowledge, it is.

Q There may be instances where it is not applied uniformly?

A I said, to the best of my knowledge, no.

[73] Q Have you ever had instances where an employee has attempted to distribute literature on Company property?

A I'm not sure that I am the best one to answer that. I have a number of plants under my jurisdiction, and it has not come to my attention.

Q To your knowledge, has any employee ever received a warning or any discipline in the Company in his attempt to distribute literature on Company property?

A Not to my knowledge.

Q Do you have instructions to your Plant Supervisors that if they discover someone distributing literature on Company property, that they are to discipline them or write them up?

A They are advised that they are not to permit it.

Q What are they suppose to do if an employee persists in carrying out the distribution of literature on Company property?

A They are told to stop.

Q In what manner?

A I don't know. We figure that the supervision is capable of handling such problems.

Q Is this to be done physically or to be done by a discipline method of some sort?

A To my knowledge, you are talking about cases that I have never—That have never occurred. We have instructed our supervision and guard force that these things are not to be [74] permitted, and we have never had this problem to my knowledge with anybody refusing to abide by this and those instructions.

Q Is a fact then to the best of your knowledge, then the Union's request to distribute literature on Company property was the first time that anyone has sought to distribute literature on Company property?

A No, sir, it is not the first.

Q Have there been attempts to distribute literature on Company property?

A Yes, sir, there was an attempt in 1956 when it was aborted.

Q What happened on that occasion?

A On that occasion the guards directed the employees to leave the parking lot and they did. That was the objection that Mr. Lingo had.

Q Have there been other occasions?

A As I said before, I am not sure if I am the best one to answer that. But, to the best of my knowledge, I don't have specific knowledge of a specific case, of any specific cases.

Q Well, to the best of your knowledge, are you saying that the rule is uniformly applied? Are you talking about the 1956 incident with Mr. Lingo and the "City of Hope" incident, is that what you mean by uniformly applying the rule?

A It was uniformly applied in both cases, yes, with an exception being the latter.

[75] Q And to the best of your knowledge, there is or has been no need to apply the rule in other cases?

A That is not what I said. I said that I am not the best person to answer that question because of the problems, they do not normally come to my attention.

Q Specifically, do you have knowledge on whether or not the rule has ever been applied as far as the two incidents, the Lingo incident and the "City of Hope" incident?

A I have had specific requests from local merchants, local civic groups, to advertise various things within the plant, and I have always rejected these requests.

Q Have you had any requests by employees to distribute?

A Some of these requests—Some civic groups have come through employees, yes, sir.

Q Just to clarify General Counsel's Exhibit No. 6, were these rules in effect prior to the certification of the Union?

A I am sure that some of them were. To say that they all were, I couldn't say.

Q Specifically Rule No. 6, during working hours?

A If I could refer to the booklet on the table there, I could probably tell.

(The booklet was handed to the witness.)

Q You just read off here awhile ago, soliciting of any kind on Company property during working hours.

A May I confer with the other one?

[76] (The other booklet was handed to the witness.)

MR. ROLNICK: Okay, let the record show that Mr. Sites is looking at Page No. 18 of Respondent's Exhibit No. 1, with the one page, and is looking at General Counsel's Exhibit No. 6.

THE WITNESS: Yes, sir, this is the same rule and the same number that was in the booklet in effect prior to the Union certification.

Q (By Mr. Rolnick) Do I understand from your testimony that Rule No. 6 on General Counsel's Exhibit No. 6 is the same rule that entitled handbills on Respondent's Exhibit No. 1?

A No, sir. Page No. 24, No. 6 is the same one.

MR. ROLNICK: Your Honor, I would join the Charging Party in it's objection to the admissibility of just one page of Respondent's Exhibit No. 1, it would seem that at least Page No. 24 in the plant rule would be applicable.

TRIAL EXAMINER: It appears that there was more than the employees handbook than Page No. 18, which is Respondent's Exhibit No. 1.

MR. McPHERSON: I would have no objection of entering into evidence Page No. 24 of which I have here and am prepared to enter. I would like to have it marked for identification as Respondent's Exhibit No. 11.

(The document above referred to [77] was marked Respondent's Exhibit No. 11 for identification.)

TRIAL EXAMINER: Would you agree on that gentlemen? That Page No. 24 would be introduced into evidence?

MR. JANETZKE: I have no objection.

MR. ROLNICK: No objection.

TRIAL EXAMINER: Respondent's Exhibit No. 11 is Page No. 24 of the employees handbook, in which Respondent's Exhibit No. 1 is Page No. 18 of that handbook, issued in 1953. By stipulation, it is received into evidence.

(The documents above referred to, heretofore marked Respondent's Exhibit No. 11, was received in evidence.)

MR. ROLNICK: By stipulating, I want to make clear that I am not agreeing that Page No. 24 or Page No. 18 of Respondent's Exhibit No. 1 & 11, are or where in possession of employees at any time during the last sixteen year period.

TRIAL EXAMINER: There is no evidence that it was.

MR. McPHERSON: I am sorry, what was your statement, please?

MR. ROLNICK: By entering into that stipulation, I am not agreeing that the employees possessed Respondent's Exhibit No. 1 and Respondent's Exhibit No. 11 at any time during those sixteen years. Mr. Trial Examiner, I have [78] no further questions.

TRIAL EXAMINER: Does the Charging Party have any questions?

MR. JANETZKE: Yes.

Q (By Mr. Janetzke) Mr. Sites, when did you begin distributing the plant rules in the form that they now appear, which I believe is General Counsel's Exhibit No. 6?

A I believe I testified that I am not sure when this specific book of rules was first issued.

Q I am not asking you about those first book of rules, but on those forms on the separate sheets. As they now appear, they are on a separate sheet, aren't they?

A Yes.

Q When did you begin distributing in your plant, rules to employees on separate sheets like you have in your hand, which is General Counsel's Exhibit No. 6?

A Well, first of all, we don't distribute rules on separate sheets like this to employees.

Q All the rules are on one page, aren't they?

A Yes.

Q How do the employees get those rules?

A They are posted in the plant.

Q When did you begin posting them in the plant in the form that they are shown on General Counsel's Exhibit No. 6, not those particular rules, but on a piece of paper listing [79] the rules?

A At least twenty years ago.

Q Now, we go back to Respondent's Exhibit Nos. 4 & 5, and so that you will know what I am talking about, Respondent's Exhibit No. 4 is the letter which I am handing you from Mr. Lingo and your reply. Are you familiar with those two letters?

A Yes.

Q Did you consider those to be an Agreement between the I.U.E. and the Local No. 796 and the Company, concerning the literature distribution?

A I understood, yes, that we were in agreement on this.

Q You understood this to be like a settlement to the contract, is that your position?

A In that it is accepted that this is one of the rules, yes sir. The contract gives us the right to formulate the rules. I pointed out in this letter that this was a rule and that we did not permit such distribution.

Q I am not asking you that question.

MR. McPHERSON: You may answer it.

Q (By Mr. Janetzke) Did you consider it to be a supplement to the agreement?

TRIAL EXAMINER: You may answer that question.

THE WITNESS: I considered it as a rule to have the strength of the contract, yes, sir. To say supplement to, no [80] the rules are not supplements to.

Q (By Mr. Janetzke) I'm not—I'm talking about the letters, the exchange of letters. Did you consider this to be an agreement between you and the Union concerning the distribution of literature?

A To me this was a reiteration of an existing policy and existing rule, accepted by the Union, yes, sir.

Q Did you consider that to be an agreement between the Union and the Company concerning literature distribution?

MR. McPHERSON: I object, Mr. Trial Examiner. I think he has answered the question.

TRIAL EXAMINER: I think he has answered the question.

Q (By Mr. Janetzke) Now, did you say you attended every contract negotiation since 1955?

A Yes, sir.

Q You have been present in every session?

A Well, now I will have to think about that a moment. I don't remember missing any.

Q Now, is the reason that nothing can get into the plant is because the guards confiscate everything at the gate?

A Did I say that nothing gets in the plant?

Q Well, leaflets?

A If an effort is made to bring leaflets in, yes, I guess they would be confiscated at the gate.

Q And, lets say there are birthday presents for an employee, [81] would they be confiscated?

A No.

Q What does the guard pick up at the gate, just leaflets?

A There are various things that people want to bring with them that we don't permit them to bring into the plant, which they will leave at the guard gate to pick up when they leave or for somebody else to pick up when they leave.

* * * *

REDIRECT EXAMINATION

Q (By Mr. McPherson) Mr. Sites, would you say—Would you state whether or not the rules shown as General Counsel's Exhibit No. 6 are currently posted in the Greeneville facility?

A Yes, sir, they are.

Q And have those rules—I will rephrase that. Would you say or state whether or not rules have continuously been posted throughout the sixteen years, the sixteen year history which has incorporated Plant Rule No. 6 of General Counsel's Exhibit No. 6?

[82] A Yes, sir, they have.

Q That is the "No Solicitation" rule, is that correct?

A That is correct.

Q What has been the Company's interpretation of Company Exhibit No. 6?

MR. JANETZKE: Objection.

TRIAL EXAMINER: You might restate that.

MR. McPHERSON: I think it would be better for me to rephrase that, yes.

Q (By Mr. McPherson) State whether or not, Mr. Sites, that Company Rule No. 6, shown on General Counsel's Exhibit No. 6 also applies to the "No Distribution" situation?

MR. JANETZKE: Objection. The rule speaks for itself.

MR. McPHERSON: I don't quite understand the objection. In view of the General Counsel's allogation as a complaint in alleging that that is the situation.

TRIAL EXAMINER: Overruled.

MR. ROLNICK: Your Honor, the complaint alleges that there is a "No Distribution" violation. The rule—The witness has testified as to the existence of the rule and that is being maintained and enforced in the plant at the moment. That is all that is encompassed by his complaint and it certainly is an illegal No Legal Solicitation rule on its face.

MR. McPHERSON: I would refer to the complaint, paragraph No. 6 wherein General Counsel alleges Respondent has [83] maintained and enforced in the plant the following rule, "Soliciting of any kind on Company property during working hours will not be permitted," which is Company Rule No. 6, shown in General Counsel's Exhibit No. 6. And, then in Paragraph No. 7, the General Counsel states that, "Since on or about May 21, 1970, Respondent, by maintaining and enforcing the provision set forth in Paragraph No. 6 above, has pro-

hibited its employees from distributing literature on behalf of the Union during employees' non-working time in non-working areas of Respondent's premises."

MR. ROLNICK: My point is that we have already established or stipulated that Respondent has enforced this, and this witness has testified that Paragraph No. 6 as a complaint which for some reason was denied in the Respondent's answer, is accurate. The Company has maintained and enforced then an exact rule.

TRIAL EXAMINER: I will overrule the objection. You may answer. Do you want the question read back to you?

THE WITNESS: Yes.

MR. McPHERSON: I can rephrase it rather than have it read back.

TRIAL EXAMINER: Okay.

Q (By Mr. McPherson) Would you state, Mr. Sites, whether or not Company Rules as shown in General Counsel's Exhibit No. 6, also pertains to distribution of literature?

[84] A Yes, sir, it does. We have assigned this rule to when people have requested the distribution of literature, we tell them that Rule No. 6 does not permit this.

Q When you say that people have requested permission to distribute literature, whom are you referring to?

A To my previous testimony of either outsiders or employees wishing to distribute literature, information about either business matters or civic activities that they want to advertise and sell in the plant.

* * * *

[85] RECROSS-EXAMINATION

Q (By Mr. Rolnick) Mr. Sites, to your knowledge, does the Company itself distribute literature on Company property?

A Yes, on occasion we do.

Q Has the Company—

MR. McPHERSON: I am going to object. This is going beyond the scope of Redirect.

TRIAL EXAMINER: Well, it is, but I will permit the inquiry.

Q (By Mr. Rolnick) Has the Company distributed literature to its employees on Company property since it denied the Union's request to do so on May 21, 1970?

A It is quite possible that we have on occasion. The supervision will prepare letters for example, to give to employees pointing out specific things that they expect of [86] them. We have this type of communication with them in connection with their work.

Q Did you also in June of 1970, distribute the monthly Magnavox magazine to employees on Company property?

A I believe on one occasion we did do that, yes, sir. Normally we mail it, and we did before and we have since then. But, on this occasion, this one occasion, for various reasons we didn't, or we did do that.

Q And you have also—Never mind, we will forget that.

MR. ROLNICK: I have nothing further.

MR. McPHERSON: I have no further question.

MR. JANETZKE: I have no further question.

EXAMINATION

Q (By Trial Examiner) Mr. Sites, I would like to have you refer to the negotiations of the original Collective Bargaining Agreement. At that time, did the Union discuss generally the matter of who, or was it specific rules that they talked about?

A It was generally a matter of rules and that we had asked to withhold the rights to formulate the rules just as the contract was eventually written. And, they asked in general if we had any plans to change any of the current rules. We reviewed them and told them that we had no immediate plans but that it was very likely from time to time in the future that we would change, specific rules were [87] not discussed.

Q The Union did not object to any specific ruling?

A No, sir.

Q As to be deleted?

A Not to my recollection, no, sir.

* * * *

JOHN R. SULLIVAN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated, please.

[88] DIRECT EXAMINATION

Q (By Mr. McPherson) State your name please.
A John R. Sullivan.
Q What is your occupation, Mr. Sullivan?
A Staff Assistant to the Director of Industrial Relations of the Magnavox Company of Greeneville, Tennessee.
Q Is the Director Mr. Byran Sites?
A Correct.
Q And you are Staff Assistant to him?
A Yes.
Q How long have you held this position?
A Since 1963.
Q What was your position prior to that?
A Assistant to the Secretary-Treasure of the International Union of Electric Workers.
TRIAL EXAMINER: I'm sorry, I didn't get that. You did what?
THE WITNESS: Assistant to the Secretary-Treasure of the United Electrical Workers.
TRIAL EXAMINER: Would you speak up please.
Q (By Mr. McPherson) How long were you employed with the International Union of Electrical, Radio and Machine Workers, is that the correct name of the Union?
A That is correct. 1951 thru 1962.
Q Where you employed with them in 1956?
[89] A Yes.
Q Specifically, I wanted to direct your attention to a decertification of election involving the International Union of Electrical, Radio, and Machine Workers here at the Greeneville, Tennessee facility for the Magnavox Company of Tennessee. Are you familiar with that situation?

A Yes, sir. I worked on it for a short period of time.

Q What was your position with the Union at that time?

A Field Representative.

Q Were you involved in that campaign and election?

A Yes.

Q Would you relate your involvement in that campaign?

A Well, we signed the election and for the last ten days or so, I was sent in the line with two or three other International Representatives.

Q Are they the fellows who had been working there for some period of time?

A Yes.

Q Who was the International Representatives who were here at the time you came?

A Mr. Lingo was the man in charge.

Q Lingo was in charge?

A Yes, sir.

MR. ROLNICK: Your Honor, I object to the International Representative of who?

[90] TRIAL EXAMINER: What?

MR. ROLNICK: Who was the International Representative for?

TRIAL EXAMINER: Identify him.

Q (By Mr. McPherson) Would you explain who Mr. Lingo was?

A Lingo was on the CIO Organizing Committee Payroll with the full reporting responsibility to the CIO Organizing Committee and to the United Auto Workers, I.U.E.

Q Was he involved in the original organizing of the Greeneville facility of the Magnavox Company?

A Yes, he had worked in this immediate area for quite a number of years. Exactly how many, I couldn't say. He worked in both organizing campaigns in this plant.

Q Was he acting in the capacity of Representative of the I.U.E. at that time?

A In both elections, yes. The plant was organized in the name of I.U.E.

Q Who was the head of the organizing team for the I.U.E.? Was he the head of that?

A Yes.

Q Now, Mr. Sullivan, did your Company have a conversation with Mr. Lingo concerning the distribution of literature on Company property?

MR. JANETZKE: I object. This witness has just testified that Mr. Lingo worked for not the I.U.E. but he was employed [91] by the CIO. I submit that it's impossible to prove say that A.B.C. is another labor organization and a person employed by a different labor organization than the CIO is certainly a different labor organization from the I.U.E.

MR. McPHERSON: Mr. Trial Examiner, I appreciate Mr. Janetzke's concern over this situation. I can understand that he is not too happy at this point in time to recognize Mr. Lingo, although they certainly seemed to be happy back in 1955 to recognize him. And, it seems quite strange that they now denounce him when in fact, he is one of the individuals who signed the original Collective Bargaining Agreement on behalf of the I.U.E.; which I think is reflected, if I am not mistaken on the first Collective Bargaining Agreement which is Company's Exhibit—Respondent's Exhibit No. 6.

MR. JANETZKE: There may be a difference between having the authority to negotiate a contract and assignment and the authority to represent a Union in other matters, such as the decertification case. There has been no direct evidence submitted that Mr. Lingo was a representative for the I.U.E. in the certification of this projection.

MR. McPHERSON: I want to explain that Mr. Sullivan is testifying to that point right now.

TRIAL EXAMINER: It appears that Mr. Lingo was one of the signers of Respondent's Exhibit No. 6 on behalf of the Union. I think there is enough prima facie evidence of the [92] witness to answer the question to put the burden on the Charging Party and General Coun-

sel of going forward with the evidence to show any lack of authority. I am going to overrule the objection.

Q (By Mr. McPherson) Mr. Sullivan, again you were with the I.U.E. at that time?

A Yes.

Q You were an International Representative, is that correct?

A Yes.

TRIAL EXAMINER: I believe you said that you were Field Representative?

THE WITNESS: Well—

TRIAL EXAMINER: Is there a difference?

THE WITNESS: No, the terms are used the same.

TRIAL EXAMINER: Very well.

Q (By Mr. McPherson) Was it your understanding that Mr. Lingo was also representing the I.U.E. in the certification?

A Yes, he was reporting to the I.U.E. Headquarters.

Q How do you know this?

A I saw the report.

Q Is this a written report that you are referring to?

A Yes. He reported jointly to us and to the CIO.

Q Was he also the individual responsible for what the Union did in the certification campaign?

A Yes, he was.

[93] Q Did he have the authority to say that this will be done and this will not be done?

A Yes, he did.

Q Did you have an occasion to have a discussion with him concerning what should be done during the campaign in regard to the distribution of literature?

A Yes, I did.

Q What was that—When was that?

A A short time before the election.

Q When was the election, Mr. Sullivan?

A I think December 20—Wait a minute, March 21, 1956, the decertification election. Arbitrations or a series of arbitrations acting by Mr. Fred Holiday, and the Union wanted an overwhelming preponderance of issues involved. And, I suggested that we reproduce all of the documents because it was so bulky that it would be

hard for him to—We would take them on to the parking lots and put them all over the cars which were in the parking lot.

Q Were you going to do this personally?

A No, sir. It was to be done by both employees and original Field Representatives that were here. Lingo didn't feel that it would be a good idea if the late comer or organizers, for lack of a better word, actively participated at the gate.

Q Now, did you discuss this with him?

[94] A Yes.

Q What was his reaction and what did he say to you?

A He said "no", that the Company had said that we could not go on Company property to distribute literature. That he had had a reasonably good working relationship with the Company at this point, and that he did not want to rock the boat, and that he wanted to abide by the Company rules.

* * * *

CLIFFORD HENDRY

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated, please.

DIRECT EXAMINATION

[95] Q (By Mr. McPherson) Would you state your name please, sir?

A Clifford Hendry.

Q And what is your occupation, Mr. Hendry?

A Manager of Industrial Relations with the Magnavox Company of the Greeneville Plant.

Q How long have you held that position, sir?

A That title, probably six or eight years. I have been in Personnel almost twenty-four years in the Greeneville Plant.

Q In the Greeneville facility?

A Yes.

Q I want to direct your attention to May 21, 1970 and ask if the Union made any request to you concerning distribution of literature on Company property?

A Yes.

Q Would you relate what occurred concerning that requests?

A We were in a Step No. 3 Grievance Meeting, and Mr. Richard Fisher, the International Representative stated that they had a handbill that they wanted to pass out in the plant on the following Monday, I believe that was the day, and it took me somewhat by surprise. I advised him that I could not give permission for the distribution in the plant, since they had not been permitted to distribute on Company property, ever. And, he stated that a recent Supreme Court ruling had changed that, and he gave me a reference and he [96] asked that I check it and consider it at that time, and tell him my position the next day. Mr. Sites was out of the country at that time, but I did confer with some persons and advised Mr. Earl King, the President of the Local the following day that our answer would be "no".

Q Now, has the Union ever before made a request to distribute literature on Company property?

A Yes, there was one occasion when an exception was made. The Union, through the President which was at that time Dorothy Pullman, requested that they be permitted to distribute a small leaflet to employees in preparation for an election that they wanted to take up at the plant gate for the "City of Hope", which they explained to be a research hospital, a non-denominational, a non-racial, and a non-everything. In other words, anyone could be admitted.

And, as I recall, Mrs. Pullman called me from over at the Union office and made the request, and then I told them that I would check it out and get back with them. And, later we did agree for them to distribute little pamphlets so that an employee would know what the "City of Hope" was, and they did make their collections then at the gate. In 1965, they made a couple of more collections for the same purpose and in subsequent years, but membership was given notice by the bulletin board

notices and other means. The one years was the only year that they passed out the pamphlets.

[97] Q When you say bulletin board notices, you mean —What other means are you referring to now, by other means?

A We have a plant paper on Wednesdays that we carry news of interest to employees. Some items of the Union Stewards and so forth for various areas, and we also carried in that notation that the "City of Hope" solicitation would take place at that gate on a specific date.

Q Mr. Hendry, I believe the Union has represented employees for approximately sixteen years, is that not correct?

A The first Labor Agreement was in effect on May 1, 1955. They actually gained their representation in the election of December of 1954.

Q Now, throughout those years, has the Union ever made distribution of handbooks, anywhere?

A They've made distribution of handbills on the street or off Company property.

Q And have they done this, to your knowledge, every year throughout the period of representation?

A Well, it seemed to me that it would be every four or five months, sometimes maybe more frequently there have been several bulletins passed out.

Q Now, the Union does have bulletin boards provided for it for literature does it not?

A Yes.

Q Are these bulletin boards for the exclusive use of the [98] Union?

A Yes, sir they are. And, on each board is marked "Local 796, I.U.E. AFL-CIO, CLC", so that they are distinguished from other boards.

Q And, how many employees does your Company have, Union employees that your Company has at this time?

A About well, I would say twenty three hundred. Are you talking about active in the plant?

Q Yes.

A About twenty three hundred, maybe fifteen or twenty.

Q And, how many bulletin boards do you have in the plant facility?

A For the Union?

Q Yes.

A For the Union, it is specified in the current agreement. I believe there are three.

Q Do you not know of your own knowledge?

A I'm not sure, whatever is provided in the agreement, plus we have provided them with bulletin boards in the warehouses and so forth, which is not specified. In other words, that is in addition to what is in the negotiated agreement.

Q How many bulletin boards are there in addition to this?

A I believe there is one in each of the Union warehouses. I would say probably two in the warehouse locations.

Q Now, in addition to the bulletin boards, do you give to [99] the Union the names and address of all employees who are hired?

A Yes.

Q Does that include any employee who is rehired?

A Rehired and all, they get a copy of what and who we hire and rehire, an employee change of status we give them, and it covers hires and rehires, and so forth.

Q Mr. Hendry, has the Union ever—Let me rephrase that. In your capacity, are you involved with grievances that were filed with the Union?

A Yes.

Q And what is your involvement?

A Holding the Step No. 3 grievance meetings for the Company, and probably a—the arbitrational meeting if it is held and assist the final disposition of arbitrations.

Q Has the Union ever, to your knowledge, filed a grievance alleging that the Company's "No Distribution" rule wasn't fair?

A Not to my knowledge, no, sir.

Q Would you state, Mr. Hendry, whether or not the Company's "No Distribution" rule has been effect through-

out the time that the Union has represented the employees?

A Yes, sir, it has.

Q Have you had occasions where individuals have asked for permission to make distributions of literature?

[100] A Yes, sir, we have had requests from—I don't know how you mean the question. We have had requests for various types of sales and so forth and merchants and so forth. Of course, we have denied—

Q What about political activity campaigns?

A Political activities, we have not had distribution of. We have had requests, but we have refused distribution of this political pamphlets and so forth on Company property.

Q To your knowledge, Mr. Hendry, with respect or with exception of the "City of Hope" situation, has the Company ever permitted any one to distribute literature on Company property?

A No, sir. There are no exceptions that I can recall.

MR. McPHERSON: I have no further questions.

TRIAL EXAMINER: Do you have any Cross-Examination?

MR. ROLNICK: Yes, sir.

CROSS-EXAMINATION

Q (By Mr. Rolnick) Has the Company distributed literature on Company property?

A We distribute our Plant Newspaper, that was mentioned earlier.

Q Fine. And in June of 1970, did you also distribute the Magnavox magazine to the employees on Company property?

A I believe that one time we did distribute the magazine. This is the only time.

[101] Q Do you post all matters that the Union hands you on bulletin boards, whenever they want something posted, do you post it?

A Yes, sir. There may have been exceptions over the years. The correct way—The contract I believe

provides the type of notice that we are able to post. I believe it excludes words of controversial matters. But, that has been very infrequent.

Q Lets assume for a moment that the Union wanted to post something in regard to a controversial nature, what would you do?

A Well, I would discuss it with them to see if we could arrive at a mutual understanding on it.

Q Go ahead, continue.

A I said that we have had, I know, of one occasion when they had a notice which I thought might be controversial and we had a discussion and changed some of the wording, and it was posted as the satisfactory need.

Q Now, what if the Union said, "No, we want to post the notice as it is"?

MR. McPHERSON: I object to that as being a conjecture.

MR. ROLNICK: Surely this gentlemen is the one man that makes that decision.

TRIAL EXAMINER: I think he can answer the hypothetical question. You can ask him what his position would be if the [102] matter was submitted as controversial under the rule.

THE WITNESS: If they brought a notice in which was controversial and we could not resolve it, I feel that by the Labor Agreement we would have the right not to post it. The Union would probably have the right to grieve by the interpretation of the provisions in the Agreement, and I think we would have that right.

Q (By Mr. Rolnick) They would have that right to grieve but not have the right to have it posted, is that right?

A That's right.

Q And, they would have—They would not have that right by the Company rules to distribute it on Company property?

A That's right.

Q When they hand you something for posting, is there a time period before you post it?

TRIAL EXAMINER: I don't understand the question?

Q (By Mr. Rolnick) Lets assume for the moment that the Union gives you a handbill at 2:00 o'clock and it is very important and they want it posted immediately, how long does it take to post it?

A We have worked with the Union in this, and to my knowledge anytime they have had a so called "rush" that was needed to be up on the board, it would be up within the hour after that. If they bring something in that can be posted later in the day, my secretary might wait until maybe she had [103] some items to put up on other boards. I don't recall any controversy as to our promptness in this.

Q You stated there were twenty-three hundred employees at present. Does that include employees on layoff?

A No, sir, that is in the plant.

Q How many employees do you currently have on layoff that you consider employees of the Company?

A I didn't check that figure. There aren't too many of them, maybe fifty or seventy-five.

Q How many employees did you have approximately in May of 1970?

A I don't know, I would have to look up some records. I don't have a thing on that.

Q You say that it is twenty-three hundred now, has it been as much as four thousand?

A No, we have never had four thousand.

Q Has it been as much as three thousand?

A At one time last year, I believe we had about three thousand people.

Q You stated that in the past on a few occasions, the Union has attempted to handbill at Plant No. 3, is that correct?

A They have passed out handbills at Plant No. 3.

Q Where did they hand out these handbills or pass them out?

A I did not personally see them passing the handbills out.

Q Does the Company dock an employee if that employee is [104] late to work?

A Yes.

Q Does it count against the employees record?

A In what way?

Q Well, do you have a certain number of discipline points, or something like that?

A Yes, I think you have to pass twelve minutes, I believe it is before you get into discipline points. But, prior to that, they would be docked pay as far as that is concerned if they are late.

Q What time do employees clock in in the morning to begin the shift?

A The majority of them at 7:00 o'clock.

Q Do the majority of your employees work on the first shift?

A Yes.

Q It runs from 7:00 until 3:30 p.m.?

A Yes.

Q Do the majority of your employees drive to work?

A They either drive or ride with someone.

Q In any event, they come to work in motor vehicles?

A Yes.

Q Do your employees live over a wide area, or do they live in Greeneville primarily?

A No, they do not live in Greeneville primarily.

[105] Q Do employees live as much as fifty or sixty miles away from the plant?

MR. McPHERSON: I am going to object. I don't see the relevancy and the materiality as far as where the employees live.

TRIAL EXAMINER: Would you explain to me, please?

MR. ROLNICK: Yes. If the issue is that the Union has adequate means to communicate with the employees, I wish to get an acknowledgment from the Company that these employees do—that they are spread out all over, and that presents a great problem for the Union in communicating. And, obviously I contend that the best means of communication is to be able to handbill at the plant on Company property.

TRIAL EXAMINER: Very well, go ahead. But, lets not spend too much time on that phase of it.

Q (By Mr. Rolnick) Mr. Hendry, the employees do live—some of them do live a good distance from the plant?

A Some of them do live a distance from the plant but I don't know of any fifty or sixty miles.

Q Do you have some that live in Johnson City?

A Yes, we have some in Johnson City.

Q That's about thirty miles from the plant?

A Yes, sir.

Q Do any of your employees live in North Carolina?

A We have some over here at Morrison, but that is only [106] about—It's closer than Johnson City actually to the state line over here.

Q Are you ever present in the mornings when the employees report to work?

A I suppose I have, sometimes.

Q Have you ever observed the employees as they drive into the Company parking lot at Plant No. 3?

A I don't know that I have particularly.

Q Or observed the time of the morning that they arrive?

A They come in in various times.

Q Does the greater amount of employees arrive at the plant close to 7:00 o'clock or as close to 7:00 as they can time it?

A I think around 6:30 is the heavy time.

* * * *

[107] Q (By Mr. Rolnick) In October, 1970, did your supervisors or group leaders distribute the United Fund literature to employees while they were working at the plant?

A I can't actually say of my own knowledge. Mr. Hanes usually handles that United Fund. We do make the United Fund available to the employees through the payroll deduction plan.

MR. ROLNICK: I have nothing further.

TRIAL EXAMINER: Do you have any questions, Mr. Janetzke?

Q (By Mr. Janetzke) Mr. Hendry, I'm not clear, are you saying that the total bargaining unit is twenty-three

hundred or the total unit members, that the total Union membership is twenty-three hundred?

A No, you—

Q Currently the total employees in the bargaining unit?

A Total number of hourly employees in the plant in the bargaining unit is little in excess of twenty-three hundred, I think.

Q How many of these total, work at Plant No. 3 on the day shift that you described as 7:00 to 3:30, I believe?

A Again, I would have to refer to records, and I would say about two thousand. It is a large majority, eighteen hundred to two thousand.

[108] Q How many are on the second shift at Plant No. 3?

A Well, I really don't know. Possible one hundred or so. There is maintenance stores and a little shipping, I think.

Q Also in Plant No. 2, how many shifts are there?

A There are some two shift operations over there for the second shift at plant two.

Q How many are on the first shift?

A And, again without referring to the records, approximately one hundred and fifty on the first shift.

Q What about the second shift?

A Building No. 4 is on second, and I guess there is not over fifty or seventy-five on the second shift.

Q When you had three thousand employees back in 1970, how many were on the first shift or the 7:00 to 3:30 shift at Plant No. 3?

A We had an assembly line on the second shift then.

Q I'm talking about the 7:00 to 3:30 shift at Plant No. 3.

A I was trying to go through the process of elimination to see what we had. I would guess twenty-five hundred, I don't know.

Q How many?

A Twenty-five—I think we said about two thousand now, twenty-four hundred, something like that.

Q Do they have to clock in by 7:00 or be in their work area by 7:00 when they are on the first shift?
[109] A They are suppose to be in their work area by 7:00, but they are not docked if they clock in by 7:00.

Q They the Company rule is that they have to be not only clocked in but in their work area, is that correct?

A This is what we ask.

Q And from the clocks, it may be a minute or two minute walk to the work area, is that correct, maybe three?

A Well, some clocks are adjacent to the area in which they work. The aisle way—Number of the clocks from the employee entrances, some maybe twenty feet from the end of the production line and so forth.

Q Is there any bus service down to the plant?

A There has been occasions in the past, but I don't think there is now.

Q In other words, unless you walk to work, you have to drive to work, is that correct?

A That's about it.

Q How many parking spaces is there at the plant?

A We manage to take care of all of the cars for people that drive. We made a study of it, but I don't have the figures. I don't know.

Q Now, you said that there was one Union notice that you considered to be controversial, would you tell us what that notice said?

A I don't believe I used the term "recent".

[110] MR. McPHERSON: I object to this as being irrelevant and immaterial. I don't see where it is pertinent to the issues involved in this case at all.

* * * *

[111] TRIAL EXAMINER: If he remembers, he may answer it.

THE WITNESS: The notice that the Local wanted to post, it had to do with a strike that was occurring in town, and a meeting to meet their needs or something to that effect. And, after discussion it with them, we worded the meaning to support this particular activity,

or something like that. We did go ahead and post it. It was a very minor change in the wording.

Q (By Mr. Janetzke) What one was there prior to that?

MR. McPHERSON: He has testified, Mr. Trial Examiner, that there was only one.

TRIAL EXAMINER: My recollection is that there was only one.

Q (By Mr. Janetzke) There was just one?

A That's the only one that I recall.

MR. JANETZKE: No further questions.

TRIAL EXAMINER: Is there any Redirect?

MR. McPHERSON: Yes, I have just one or two questions on Redirect.

REDIRECT EXAMINATION

Q (By Mr. McPherson) When did Plant No. 3 open, Mr. Hendry?

[112] A In July, 1963.

Q Has the compliment work force in the bargaining unit remained relative constant since it opened?

A Relatively so, yes, sir. Some seasonal areas, but relatively it is the same.

Q Now, you stated earlier that the Union has, on occasion throughout the years made handbill or given handbills to the employees, is that correct?

A Yes.

Q There were not done on Company property, is that correct or not?

A My understanding is that it was on the street, the entrance to the parking lot, entrance to Company property.

Q But, not on Company property?

A No.

MR. McPHERSON: I have no further questions.

* * * *

[117] PROCEEDINGS

TRIAL EXAMINER MALLER: The hearing will be in order. This is the second day. Does the Respondent have anything further to offer?

MR. McPHERSON: I believe that Mr. Janetzke of the General Counsel has a statement that he would like to make, at which time I can then—

MR. JANETZKE: The Charging Party checked out Mr. Lingo's status while he was employed by the CIO. He was acting on behalf of the CIO, and I guess, organizing and assisting the I.U.E. So, I think the I.U.E. would be in this situation, hard pressed to maintain a—Cannot have some agency status on behalf of this Union.

So, I guess that will eliminate Mr. McPherson of any necessity of calling additional witnesses in that regard.

TRIAL EXAMINER: Very well.

MR. McPHERSON: I would like a little further clarification on the record, sir, but I don't have to do that. I would like to propose a stipulation mentioning that he was acting as an Agent for the I.U.E. during this period of time, involved in this testimony.

MR. JANETZKE: The Charging Party will stipulate to that.

TRIAL EXAMINER: Does the General Counsel stipulate to that?

[118] MR. ROLNICK: Yes.

TRIAL EXAMINER: Very well, the stipulation is noted.

MR. McPHERSON: Now, Mr. Trial Examiner, as I understand it, all Respondent's Exhibits have been put into evidence, is that correct, sir?

TRIAL EXAMINER: That is correct.

MR. McPHERSON: That includes Respondent's Exhibit No. 11 which was Page No. 24 of the Handbook?

TRIAL EXAMINER: That w s admitted by stipulation.

MR. ROLNICK: Your Honor, I think I had better qualify my joining of the last stipulation that Mr. Lingo was acting as an Agent. I agreed that Mr. Lingo did act as an Agent for the I.U.E. in certain capacities. Wheth-

er or not Mr. Lingo in the capacity in question, exceeded his authority as a matter of, I will argue.

TRIAL EXAMINER: What?

MR. ROLNICK: Whether he exceeded his authority as an Agent, I will argue that.

TRIAL EXAMINER: You will argue that he might have exceeded his authority, did exceed his authority?

MR. ROLNICK: That is correct. I don't intend to introduce evidence on this. It is an argument that I would make based on letters and the contractual provisions in the testimony.

TRIAL EXAMINER: With that exception, do you accept the [119] stipulation?

MR. McPHERSON: Well, that puts me in the position again of having to show the extent of his authority if that is now what we are going to be faced with. And, I am very much afraid that I will have to put on additional evidence to show the range of activities that Mr. Lingo carried on, on behalf of the Union. So, I had planned to question Mr. Clifford Hendry concerning his additional activities, and he is on his way down here.

And, if I might proceed into that area of questioning later and not further delay the proceedings, I would like to do so. It would be brief testimony. But, if I could, with that provision later?

TRIAL EXAMINER: I will let you go ahead and recall Mr. Hendry later for that testimony that you want to—

MR. ROLNICK: May we go off the record?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record. Counsel's have stipulated that a further statement of stipulation—

MR. McPHERSON: The Respondent would further propose as a stipulation that Mr. Lingo assisted the Union by representing the Local and it's representative at grievance meetings between the Union and the Company, and by representing the Local at arbitration hearings between the Union and the [120] Company. And, I think we've already got the contract in. That would be the extent of my stipulation.

MR. ROLNICK: I will stipulate to that.

TRIAL EXAMINER: Does the Charging Party stipulate to that?

MR. JANETZKE: The Charging Party will stipulate.

TRIAL EXAMINER: Very well, the stipulation is noted on the record.

MR. McPHERSON: I have one further thing that I would move to stipulate, and that is that Mr. Lingo also assisted the Union by representing it in the 1956 Contract Negotiations.

MR. JANETZKE: I am sorry, I missed that.

MR. McPHERSON: He negotiated in 1956.

MR. ROLNICK: I will stipulate to that.

TRIAL EXAMINER: Does the Charging Party stipulate to that?

MR. JANETZKE: Let me check the contract.

MR. McPHERSON: He did not sign the contract, but he was involved in the negotiations.

MR. JANETZKE: The Charging Party has no way of knowing whether he did or not. I want—I oppose the stipulation.

TRIAL EXAMINER: Can you agree to it?

MR. JANETZKE: Yes,—Oh, no, I am sorry, I do not agree to it.

TRIAL EXAMINER: The proposed stipulation fails for [121] lack of agreement.

MR. McPHERSON: Then, I would like to call Mr. Hendry for just one or two brief questions, if I may?

TRIAL EXAMINER: Mr. Hendry, please resume the stand.

Whereupon,

CLIFFORD HENDRY

was recalled as a witness by and on behalf of the Respondent and, having been reminded that he was still under oath, was further examined and testified as follows:

TRIAL EXAMINER: You were previously sworn and you are still under oath.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

Q (By Mr. McPherson) Mr. Hendry, did you attend the 1956 negotiation between the Company and the Union?

A Yes.

Q Did you make notes concerning those negotiations?

A Yes, sir.

Q And, in part of those notes, did you list the individuals who were present for the Company and for the Union?

A Yes.

MR. McPHERSON: We request that this be marked as Respondent's Exhibit No. 12.

(The document above referred to was marked Respondent's Exhibit No. 12 for identification.)

[122] MR. McPHERSON: I request that this document here be marked as Respondent's Exhibit No. 13.

(The document above referred to was marked Respondent's Exhibit No. 13 for identification.)

MR. McPHERSON: Mr. Trial Examiner, I think the Charging Party and the General Counsel will—I now so stipulate that based upon a review of Respondent's Exhibit Nos. 12 & 13, that Mr. Lingo did participate in the 1956 negotiations. And, if they will so stipulate, I will withdraw those two documents.

MR. JANETZKE: The Charging Party will so stipulate.

MR. ROLNICK: We will so stipulate.

TRIAL EXAMINER: Very well, in view of the stipulation that it is accepted, then Respondent's Exhibit Nos. 12 & 13 are withdrawn. They were not offered in any event.

MR. McPHERSON: At this time, Mr. Trial Examiner, the Respondent rests.

MR. ROLNICK: May I ask before we continue, has Respondent's Exhibit No. 11 been received?

TRIAL EXAMINER: Yes, by stipulation it was received in evidence.

MR. ROLNICK: Thank you. General Counsel calls as it's first rebuttal witness Mr. Bobby Kimery.
Whereupon,

BOBBY KIMERY

[123] was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated please. Spell your name for the record, please?

THE WITNESS: (Spelling) K-i-m-e-r-y, Bobby Kimery.

DIRECT EXAMINATION

Q (By Mr. Rolnick) Are you employed by Magnavox?

TRIAL EXAMINER: Have the witness identify himself for the record, please.

MR. ROLNICK: I thought he had.

Q (By Mr. Rolnick) State your name and address for the record please?

A Bobby Kimery, Route #2, Afton Tennessee.

Q Are you employed by Magnavox Company in Greeneville, Tennessee?

A Yes, I am.

Q In part of Plant No. 3?

A Yes.

Q How long have you been employed by Magnavox?

A Nineteen years.

Q Are you a member of the Local 796 of the I.U.E.?

A Yes, I am.

Q Do you have any office in that Union?

A Yes.

[124] Q What is that office?

A Vice President.

Q How long have you been Vice President?

A About a year and a half.

Q Directing your attention to the month of October, 1970, did you participate in the Union leaflet distribution at Plant No. 3?

A Yes, I did.

Q Do you recall the date?

A The eighth.
Q What time did you arrive?
A Six o'clock.
Q A.M. or P.M.?
A A.M.
Q At that time, did you—would you describe whether it was light or dark?
A It was dark.
Q Where did you take up position in order to pass out the leaflets? Where were you standing?
A I forget the name of the street. Anyway, it was right in front of the Union Hall.
Q Referring to General Counsel's Exhibit No. 7, what road were you on?
A Kiser Blvd.
Q As you are holding the Exhibit, looking at it as it is [125] marked "East", which of the two entrances were you standing at?
A This one. (Indicating.)
Q The one on the right?
MR. MCPHERSON: Perhaps if we could have them—Excuse me, Mr. General Counsel, if we could have them marked where he was standing, I think it would clarify the record.
TRIAL EXAMINER: Let's get our—Let's use a road pen so that we can mark that. Mark it with an "X".
Q (By Mr. Rolnick) Mark it with an "X" where you were standing.
A I was standing right in here. (Indicating.)
Q Right in the middle of the drive-way? Mark that with an "X", a big "X".
A It was right in here.

(The witness marked the Exhibit with an "X".)

TRIAL EXAMINER: Put a circle around that so that it will be more visible.
MR. ROLNICK: The record will show that the witness made an "X" in the middle of the right drive-way as you are facing East.
Q (By Mr. Rolnick) Now, as you are standing there, or as you were standing there, would you describe how the cars entered the parking lot as you were standing in the middle of that drive-way?

[126] A Well, they come off the Snapps Ferry Road to Kiser Boulevard, and as they come to the lane where I was handing out leaflets in, where they could come into it because there are two roads and they were coming two at a time.

Q You have one car passing you and one passing you on the right?

A Well, one coming here and another coming here, pointing right and left, and I was over here checking these over here. (Indicating.)

Q And you are standing in the middle of the entrance there?

A Yes.

TRIAL EXAMINER: Let the record show that the witness was indicating with his hands that cars entered on both sides of him.

Q (By Mr. Rolnick) Now, at any time during the morning, was the traffic getting heavy or does it maintain the same amount?

A Well, from 6:00 until 6:30 it is not too awfully heavy, but then after 6:30 and up until the time I left, it was getting awfully heavy.

Q What time did you leave?

A From five to six minutes until 7:00.

Q Why did you leave at that time?

A I had to get back and clock in and be at the shop at [127] 7:00 o'clock.

Q Are you suppose to be at your work station at 7:00?

A Yes.

Q Was there, at the time you left to go in to clock in, were there still employees arriving at the plant?

A Yes.

Q Is there any problem of any kind standing in the middle of the drive-way with two lines of traffic coming into the plant?

A The problems is, as everyone knows, as you come down the Boulevard, the cars coming here (Indicating.) are going into other plants. Of course, coming up the street, they would dart in to get ahead of another car

and you are standing there in the middle of the aisle. And, if the man is asleep, he is liable to run over you.

Q Do employees stop to get these leaflets?

A Well, sometimes they do. Most of the time they do.

Q As a result of the cars stopping, does this have any affect on the flow of the traffic back up the street?

A Sure, it backs it up down the street.

Q Okay. Directing your attention to the month of June, 1970, did you receive a Magnavox magazine from any—

MR. MCPHERSON: I think that has been very well established that that was handed out by the Company if that is what you are getting to.

[128] MR. ROLNICK: Can we stipulate that in June of 1970, the Company, thru Mr. Crow, at one guard gate, distributed the Magnavox magazine at the guard gate, and that there is normally an entrance at the guard gate which would allow several employees to come out at one time. But, by placing the fence in a certain position, you can cut it down to where the employees would have to come out at one at a time. This was done in order to facilitate the handing out of the magazine.

MR. MCPHERSON: I don't know about the closing of the gate to facilitate the handing out of the magazine, but we did or they did hand out the magazines. This has been according to my witnesses and we are not disputing that. I just don't know that we need to go into detail on it.

MR. ROLNICK: All right. Let me go in then just to placing the fence as to where the employees can go out.

TRIAL EXAMINER: All right, proceed.

MR. MCPHERSON: If he is going to testify to that, I will stipulate.

MR. ROLNICK: Fine. I'll accept the stipulation.

TRIAL EXAMINER: The stipulation as stated by the Counsel, the General Counsel is accepted by the Respondent.

MR. JANETZKE: And by the Charging Party.

TRIAL EXAMINER: And by the Charging Party, very well. This is noted for the record.

[129] Q (By Mr. Rolnick) Mr. Kimery, does the Union ever attempt—Has it ever attempted to distribute literature to employees in the parking lot after shift change in the afternoon or at shift change? Or after shift change?

A No.

Q Why is that, sir?

A You would really get run over then because, as you have noticed coming out of there, they come out four abreast and, of course, they are in a hurry to get home and you would get run over.

Q Regarding the Weekly News Letter which we have received certain testimony about, can you tell us Mr. Kimery, have you ever obtained copies of this News Letter while you were working at your job?

A Yes.

Q How did you get those copies?

A Somebody would go on lunch break and they would bring them back and we get them on the line.

Q I see. What is your job, sir?

A Repairman Second Class.

MR. ROLNICK: I have no further questions.

TRIAL EXAMINER: Does the Charging Party have any questions?

MR. JANETZKE: Yes, I have a few questions.

TRIAL EXAMINER: Okay.

[130] Q (By Mr. Janetzke) Mr. Kimery, when you were passing out leaflets at the time you left, could you tell us if cars were backed up along—let's take Kiser Boulevard and which way they were backed up and if they were? Let me ask you first, were the cars backed up?

A They were.

Q Now, I hand you what has been marked as General Counsel's Exhibit No. 7 and ask you if you can tell us how far along Kiser Boulevard, and let's take the southern direction, how far they were backed up?

A They were backed up down to—

TRIAL EXAMINER: Excuse me, just a moment. Now, let me see my copy of this now. Okay, go ahead. Yes, I see it down underneath here. Very well, proceed.

THE WITNESS: It was backed down to the Snapps Ferry Road when I left to go to the plant that morning.

Q (By Mr. Janetzke) How many cars can you get in between—How many cars line up from the entrance where you would be distributing down to Snapps Ferry Road?

A Oh, fifteen or twenty. I would something like that.

Q Did you have cars to observe what was occurring which would be to your left or north along Kiser Boulevard?

A Yes, because when I left, Margaret Brown—It was all clogged up there, so Margaret Brown—That's where I was at before I started into the plant. She went to the other [131] entrance to help them get it unclogged there.

Q What did you observe after you studied the traffic at Kiser Boulevard, north up along there?

A There is a curve about one hundred yards, I would say, and you could see cars run backed up through there.

Q Were you able from your position to see Industrial Road from where you were standing, or did you observe what was happening on Industrial Road?

A Not clearly.

Q You have indicated that you have observed all the traffic that comes out of that entrance or exit where you were distributing literature. You indicated that you observed that I guess at 3:30, that's the end of the shift?

A Yes.

Q From your observation, would it be possible to pass out leaflets there?

A Not the way those cars come out of there, no.

MR. JANETZKE: I have no further questions.

TRIAL EXAMINER: Do you have any Cross-Examination?

MR. MCPHERSON: Yes, sir.

CROSS EXAMINATION

Q (By Mr. McPherson) Mr. Kimery, is that the way you pronounce it?

A Yes.

MR. MCPHERSON: May I see General Counsel's Exhibit No. 7 [132] that we have been marking?

(General Counsel's Exhibit No. 7 was handed to Mr. McPherson.)

Q (By Mr. McPherson) Now, just for clarification, Mr. Kimery, if you would look at this, there is no fence right along here. This is not a fence is it? (Indicating.)

TRIAL EXAMINER: You are indicating the East side?

MR. MCPHERSON: On the East side on Kiser Boulevard there is a line that goes along here and it curves that way. That is not a fence is it?

THE WITNESS: You mean in the parking lot?

Q (By Mr. McPherson) Yes.

A No, it is just a gate right at the entrance.

Q A parking entrance surely, a paved road?

A Yes, sir.

• • • •

TRIAL EXAMINER: Back on the record. Let the record [133] show that General Counsel's Exhibit No. 6, it appears to be—No. 7 that is, there appears to be a line drawn along the plant side of Kiser Boulevard which is labeled the East side of the plant. I am now drawing a wavey line along that solid line, and that wavey line indicates not a fence but a drainage ditch between the premises of the Respondent along Kiser Boulevard.

MR. JANETZKE: The Charging Party has no objection to that, we will stipulate.

TRIAL EXAMINER: Very well.

• • • •

Q (By Mr. McPherson) Mr. Kimery, Snapps Ferry Road comes down to this point right here, (Indicating.) does it not?

A Yes.

TRIAL EXAMINER: You are indicating that Snapps Ferry Road curves into Kiser, in junction with Kiser Boulevard.

Q (By Mr. McPherson) At the point where I am closing the "Y" is that not correct? In other words, all of this right in here?

A Yes.

Q Now, you were standing you say in the middle of the drive-way entrance, is that correct?

[134] A Yes.

Q Where the entrance is marked?

A Yes.

Q Were you on Company property?

A It's right just before you get—I went through the —No, I was just out on the edge of the road.

Q Right outside the gate that goes across that entrance, it can be closed, is that correct?

A At the street, yes.

Q So, you were not on Company property at the time you were doing this?

A No.

Q All right. Now, on the street itself, there is a shoulder, is there not? I mean, it's not pavement and then Company property? It is just like any other street where there is a shoulder that you can walk on?

A No, it is just all—It is the road that comes in there.

Q It comes in there where you turn in, but I am talking about the street itself on Kiser Boulevard. It is like a normal road where you have the paved portion and then you have a little portion along the side that is not paved?

A No, it is all paved.

Q It is all paved?

(The witness shook his head affirmatively.)

Q Now, who was with you at the time you were making these [135] handouts?

A Margaret Brown.

Q And she was not on Company property either?

A No, she was standing out there too.

Q Now, is that the only time that the Union has made handouts at that entrance?

A No, we have handed out there before.

Q When was the time before this last one that you testified to?

A I don't recall exactly the date. It's just that, you know, we do this every so often.

Q So, and when you do make your handouts, you al-

ways make them at those entrances like that, is that correct?

A Yes, sir.

Q Is that the only entrance that you use?

A No.

Q What other entrances do you use when you make your handouts?

A There is another one, of course, over on Kiser Boulevard where we use—

TRIAL EXAMINER: Let's put an "A" there.

Q (By Mr. McPherson) Are you speaking of right here? (Indicating.)

A Yes.

TRIAL EXAMINER: Mark that "A" with a circle.

[136] Q (By Mr. McPherson) What other entrances do you use?

A Right down here. (Indicating.)

Q Back here now? That would be on Company property wouldn't it?

A Yes, that's where it comes off Snapps Ferry Road at the railroad.

Q Is there anyplace else where you do this?

A No, just those three places.

Q Comes off Company property to get out there on the road?

A Yes.

Q And on these three places where we have marked them with an "X", an "A", and a "B", at no time do the employees stand on Company property, is that what you are testifying to?

A We stand there in the street.

Q You are not on Company property?

A Well, it is as, you know, of course, the road comes up through here and we turn off the street—We stand out there. (Indicating.)

Q Do you think you are on Company property or not?

A I wouldn't think so.

Q Okay. And, this has always been where the Union or how the Union has made it's handouts, is that correct?

A Yes.

Q How long have you worked for Magnavox?

A Nineteen years.

[137] Q Nineteen years?

(The witness shook his head affirmatively.)

Q So you have been there throughout the sixteen year history of the Union?

A Yes.

Q Is this the only time right now since—I think you said that you have been Vice President a year and a half, have you not?

A Yes.

Q Is this the only time in your history with the Company that you have held a position with the Union?

A No. I have held Sargent of Arms, I have been Steward.

Q If you would, tell us when you were Sargent of Arms?

MR. ROLNICK: Objection, it is irrelevant.

TRIAL EXAMINER: Is it as relevant as you think so?

MR. McPHERSON: Very well.

TRIAL EXAMINER: Very well, you may proceed.

THE WITNESS: Well, this—

MR. ROLNICK: Well, Your Honor, if I may, I can't see any relevance and I'm not about to take Mr. McPherson assertion that it connects something up. That couldn't possibly be relevant to the case. If he will enlighten me how it is relevant than I can—

MR. McPHERSON: Mr. Trial Examiner, I don't think it is Mr. Rolnicks responsibility as to whether he takes my [138] assertions or not. I believe that is within the perogative of the Trial Examiner.

MR. ROLNICK: This is rebuttal, Your Honor. It is a very limited rebuttal.

TRIAL EXAMINER: Just a moment. When an assertion is made that it's relevant and would be connected up. I would permit the testimony subject to the objection. If Counsel fails to connect it up to the issue, and it appears to you to be irrelevant, then you may make a motion to strike. Overruled subject to the objection, it is received. Proceed.

Q (By Mr. McPherson) Just to the best of your recollection, over a long period of time it is difficult I know.

A I believe it has been four years back, I believe. That was when I was Sargent of Arms. I wouldn't—I believe it was four years back.

Q And you were Steward also, is that correct-

A Yes.

Q Has that been earlier or has that been since you were Sargent of Arms or before you were Sargent of Arms?

A Both.

Q Both, before and since?

A Yes.

Q What about 1956, were you—Did you hold any position with the Union?

MR. ROLNICK: Objection. This is clearly beyond the [139] scope of rebuttal. This witness was put on to testify three very brief things, none of which is covered by the questions now being propoundered by Counsel.

TRIAL EXAMINER: I believe the—it appears to be beyond the scope of this unless you can formulate it otherwise.

MR. McPHERSON: All right, I won't insist on that.

Q (By Mr. McPherson) Mr. Kimery, let's go back to the distribution since you were involved with the Union in some capacity has it not been true, that the Union has passed out handbills in the manner you have described?

A Have we passed out handbills like this before?

Q Yes.

A Yes.

Q And, always in the same manner in which you have just described on that one occasion, is that not true?

A Yes, I believe we have always done it that way.

Q You have always done it that way?

A Yes.

Q As far back as you can remember, you have always done it that way?

A Well, we have had different plants.

Q At Plant No. 3?

A Yes, at Plant No. 3.

Q Going back to Plant No. 2 when that was fully

staffed with bargaining unit employees, you made the pass-outs at [140] Plant No. 2 in much the same manner of not getting on Company property?

MR. JANETZKE: Objection.

MR. ROLNICK: Objection.

MR. JANETZKE: It is clearly beyond the scope of Plant No. 2.

TRIAL EXAMINER: Sustained.

MR. McPHERSON: Mr. Trial Examiner, I—All right, I will withdraw that.

Q (By Mr. McPherson) Plant No. 8 has been in operation since 1968, is that not correct?

A Yes.

Q That is some seven years now?

A Right.

Q And for that seven year period, you have made your pass-outs on the road which were exactly as you have described now?

A Yes.

Q Mr. Kimerly, why didn't you come on the Company property and make the pass-outs?

A Because we have never been allowed to.

Q You have never been allowed to?

A No.

Q Why haven't you been allowed to? Are you saying that the Company had a rule prohibiting the distribution on [141] Company property, the distribution of literature on Company property?

MR. ROLNICK: Objection, it is a duplicity of questions.

TRIAL EXAMINER: Well, the answer would answer a lot of questions.

Q (By Mr. McPherson) You say that you have never been allowed to make the handouts on Company property?

A Yes.

Q Who would not allow you to do that, the Company?

A As far as I know, yes.

Q This has been true as far back as you can remember?

A Yes.

Q There is no doubt in your mind about that?

A That's where we have always had it. That is all I know, we have just handed them out at this point.

Q Because the Company had a rule that would not let you pass out that on Company property?

A I don't know about the rule. It is just that we have always done it this way.

Q If it is dangerous to do it this way and if it backs up traffic on Snapps Ferry Road, all the way back to Snapps Ferry Road and down Kiser Boulevard, why haven't you come on Company property to do that, you have been doing it for seven years?

A That is just what—We have always done it this way. [142] It is all I know.

Q Would the Company let you do it?

TRIAL EXAMINER: As you know.

THE WITNESS: I don't know, we have always been told to hand them out at the street there.

Q (By Mr. McPherson) When you say that you have always been told, by whom have you been told?

A By our officers.

Q By your officers?

A Yes.

Q When you say by "our officers", you mean by the Union officers?

A Yes.

Q Mr. Kimery, you stated I believe, correct me if I am wrong, in the evening when the employees leave, that they just zoom out these exits onto Kiser Boulevard, is that your statement? Is that correct?

A They come out four abreast. These two here would turn to the left and they would get out of the way, and then two more can be coming out of the parking lot, four abreast.

Q When a shift ends, is it not true that everyone reaches their cars within a few seconds of one another and then they stack up down there at the entrance to get out? That after the first three or four cars go out, the rest of them go out quite slowly?

[143] A No, they don't go out quite slowly.

Q They don't?

A No.

Q They do back up there, do they not?

A They back up there.

Q Once they get to the street, I guess they do pretty well take off, is that what you are saying?

A Well, they go out—Of course, there are two roads they can go out to go down to Snapps Ferry. Two will go out and the other two will sort of follow and it is just moving all of the time. Four of them will be at the road at the same time.

Q But, it has always been that way, hasn't it? Has it not?

A Yes.

Q That isn't something that is or has suddenly developed, say in a year, since last year?

A Well, we have in the last two or three years, I suppose.

Q In the last two or three years?

A For—Of course, we've got more people there in the last three or four years than we had back say five years ago.

Q In the last three or four years though, you have had relatively the same low and high employment?

A Yes.

* * * *

[145] Q (By Mr. McPherson) Mr. Kimery, you testified that the Company has a News Letter, is that not true?

A Yes.

Q And that you have received this News Letter while at your work station?

A Yes.

Q I believe your testimony was that this was brought back to you by another employee who had been on the regular break for lunch?

A Yes.

Q Now, these News Letters are put on racks or in boxes at various places throughout the plant, are they not?

A Yes.

Q They are not actually handed out, gone around to and handed out to the individuals, is that correct?

A They are put in boxes in the cafeteria and stuff.

Q They are there for—If you want one, you can take one, and if you don't want one, you don't have to take one, is that correct?

A That's right.

MR. McPHERSON: One moment please.

(Pause.)

Q (By Mr. McPherson) Mr. Kimery, one further question, how long in your opinion does it take the employees to get [146] out of the parking lot that you have described?

A Approximately fifteen or twenty minutes, something like that.

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REDIRECT EXAMINATION

Q (By Mr. Janetzke) Mr. Kimery, prior to May of 1970, did any Company boss or any official of the Company, Supervisor, tell you that the Union was not allowed to distribute literature on Company property? Did anyone tell you personally?

A Even at that meeting we were told that.

Q When was that meeting?

A The exact date, I don't know, but it was back a month or so ago.

Q I am talking about prior to May of 1970?

A Oh, no.

Q Did any Company boss or official of the Company, any of the Supervisors of the Company, tell you that the Union could not pass out literature on Company property?

A No.

[147] MR. JANETZKE: No further questions.

MR. McPHERSON: Mr. Trial Examiner, I believe that there was my line of questioning that I was going into previously, and I would like to pursue that at this time.

TRIAL EXAMINER: I'm afraid it does, you may proceed.

RECROSS-EXAMINATION

Q (By Mr. McPherson) Mr. Kimery, I want to hand you a handbook which has been discussed here, and ask you if you have ever seen that before?

A Not until yesterday.

Q Not until yesterday? Now, I want you to make sure of your answer now, is that correct or not?

A I have never seen it.

Q You have worked with the Company for nineteen years, is that correct?

A Yes.

* * * *

[148] MR. McPHERSON: I would request that this be marked as Respondent's Exhibit No. 14.

(The document above referred to was marked Respondent's Exhibit No. 14 for identification.)

MR. McPHERSON: I would like to substitute copies for [149] this Exhibit if I might?

TRIAL EXAMINER: Permitted. Permission is granted.

Q (By Mr. McPherson) Mr. Kimery, I show you what has been marked as Respondent's Exhibit No. 14, as it is here, and ask you if that is not a receipt signed by you? That is your signature dated 7-22-58, is that correct?

A Yes.

Q That is your clock number?

A No. 684, yes.

Q No. 684, I see. Now, Mr. Kimery, if you would sir, look in the back of this handbook entitled "You and Your Company", and tell me if that is not the same receipt as to what is shown in the back of this handbook?

A Yes, it looks the same.

Q And this receipt that you signed says, "I hereby sign and acknowledge receipt of booklet entitled "You And Your Company" and agree to study its contents carefully and abide by all the rules and regulations contained therein." Is that not correct?

A That's what it says.

* * * *

[150] CHARLOTTE SEXTON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated please.

DIRECT EXAMINATION

Q (By Mr. Rolnick) State your name and address for the record.

A Charlotte Sexton, Box 4, Afton, Tennessee.

TRIAL EXAMINER: How do you spell your last name please?

THE WITNESS: (Spelling) S-e-x-t-o-n.

Q (By Mr. Rolnick) You are employed by Magnavox Company in Greeneville, Tennessee?

A Yes, I am.

Q How long have you worked at that Company?

A Since September of '54.

Q Are you a member of the Local No. 796 of the I.U.E.?

A Yes, I am.

Q Do you serve any capacity for that Union?

A Yes, I do.

Q What is that?

A Chief Steward.

Q How long have you been Chief Steward?

A Nine year and a half.

[151] Q Directing your attention to the month of June, 1970, did you have any conversation with any Supervisor or Agent of the Company with regard to the distribution of at a guard gate of Magnavox magazine?

A Yes, I have.

Q Who did you talk to?

A Fred Gettings.

MR. McPHERSON: If I may interrupt here, we can stipulate to that instead of going into it.

MR. ROLNICK: It is very short. The witness had a conversation with Mr. Fred Gettings, in which she asked

him in effect why you are doing this. And, his answer was that they were saving on the budget.

MR. McPHERSON: We will stipulate to that.

TRIAL EXAMINER: Who is this Mr. Gettings you are talking about?

MR. McPHERSON: Mr. Gettings is the Assistant to Mr. Clifford Hendry.

TRIAL EXAMINER: Representatives of the Management?

MR. McPHERSON: Yes.

TRIAL EXAMINER: Is the stipulation satisfactory?

MR. ROLNICK: Yes, it is.

MR. JANETZKE: I would suggest that the stipulation includes the position of the guard gate, that it appears towards the bottom of the General Counsel's Exhibit No. 7.

[152] TRIAL EXAMINER: You say towards the bottom. Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record. Let the record show that the guard gates referred to by Mr. Janetzke, has been marked with a capital "C" on General Counsel's Exhibit No. 7. Is that stipulation satisfactory to all parties?

MR. McPHERSON: Yes.

MR. ROLNICK: Yes.

MR. JANETZKE: Yes.

TRIAL EXAMINER: Very well, the stipulation is noted.

Q (By Mr. Rolnick) Have you had occasion to observe the build-up of traffic on occasions when the Union attempts to hand out the leaflets at the parking entrance to Plant No. 3?

A Yes, I have.

Q What is the condition of traffic on those occasions?

A Well, the traffic was blocked across the road and it was building up.

* * * *

[153] Q (By Mr. Rolnick) I believe you were telling

us about the condition of the traffic, the way it developed. Could you tell us about it?

A Well, it was prior to the negotiations of the present contract and they was handing out leaflets at the truck route going into the lower guard gate, and I was coming—

TRIAL EXAMINER: Excuse me, would you please indicate on General Counsel's Exhibit No. 7 where you are referring to?

THE WITNESS: Well, right here. (Indicating) I was right in here. (Indicating.)

TRIAL EXAMINER: Let the record show the witness indicated point "B".

THE WITNESS: Where I was stopped with the handbill.

TRIAL EXAMINER: Yes, you may proceed.

Q (By Mr. Rolnick) Were their cars between the point where you stopped and the entrance to the parking lot?

A Yes, there was.

Q Were they lined up waiting?

A They were lined up back to Snapps Ferry Road.

Q Do you know, of your own personal knowledge, whether any employees were late to work that day as a result of being [150] caught in this line of cars?

A Yes, they complained in the plant that they was late to work.

MR. ROLNICK: No further questions.

MR. JANETZKE: I have a question.

Q (By Mr. Janetzke) Which road did you come down, the Snapps Ferry or a different road?

A I come across the fair ground road at the stop sign.

Q And then you arrived at the point where Snapps Ferry Road ends and Kiser Road comes in?

A That's right.

Q What did you observe at that spot?

A The traffic was lined back out to Snapps Ferry

Road. While I was there, sitting there, someone that was in the line of traffic stopped for me to pull in the line of traffic.

Q Do you come down Fair Grounds Road?

A Yes.

Q Normally when you go to work in the morning?

A Yes.

Q When you normally come down, is there a line of traffic across Snapps Ferry Road backed up down the street?

A Well, it is according to what time I come to work. Between 6:00 and 7:00 o'clock it is pretty rough through there.

* * * *

[155] CROSS-EXAMINATION

Q (By Mr. McPherson) Miss Sexton, you say that you come down Fair Grounds Road when you come to work, is that correct?

A Yes, I do.

Q And what time do you normally come down there?

A At 6:30 in the morning.

Q At 6:30 in the morning?

A Yes.

Q And there is usually always traffic backed up there trying to get into the parking lot at that time?

A Yes.

Q And the traffic is pretty heavy through there most of the time, is that correct?

A Yes.

Q The same thing is basically true, is it not, when you leave work that the traffic is backed up coming out of the parking lot to get onto Snapps Ferry Road or Kiser Boulevard?

* * * *

[156] Q (By Mr. McPherson) It is backed up pretty well onto the parking lot, some people are coming out at the end of the shift, does it not?

A Well, it comes out of there in some different places. In some places they come out about three or four abreast.

Q But, they are still backed up and waiting to come onto the road?

A Some.

MR. McPHERSON: I have no further questions.

MR. ROLNICK: I have one further question.

REDIRECT EXAMINATION

Q (By Mr. Rolnick) I would like you to compare for me, if you will, the traffic or the back up of traffic on those mornings when the Union distributed literature at the entrances to the parking lot? Was the back up of traffic that would occur on any other mornings, could you tell us whether the back up is the same or worse or better or what?

A Well, if there is no one handing out leaflets, the traffic keeps moving. But, if there is a leaflet being handed out, then naturally it's going to—It just stops the traffic that's all. It crosses the railroad and on the [157] morning that I stopped to get my handbill, there was a car directly on the track.

* * * *

[158] CHARLES PRICE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated please.

DIRECT EXAMINATION

Q (By Mr. Rolnick) State your name and address for the record please.

A Charles Price, 408 Park Street, Greeneville, Tennessee.

Q Mr. Price, are you employed by the Magnavox Company in Greeneville, Tennessee?

A Yes.

Q Are you employed at Plant No. 3?

A Plant No. 3, yes.

Q How long have you been employed by the Company?
A About twenty years and a half.
Q Directing your attention to the month of October, 1970, did you participate in the United Fund Drive of the Company?
A I did.
Q What did you do and how did you come to do it?
A My Foreman asked me to—If I would volunteer to help pass out some literature for the United Fund and to ask people if they would like to donate to this cause.
Q Who was this Foreman?
[159] A Alvin Miller.
Q Did you pass out United Fund literature?
A Yes.
Q Did you pass this out in the working areas of the plant? Did you pass this out on working time?
A I did.
MR. ROLNICK: No further questions.
TRIAL EXAMINER: Charging Party, do you have any questions?
MR. JANETZKE: No questions.
TRIAL EXAMINER: Do you have any Cross-Examination of this witness, Mr. McPherson?
MR. McPHERSON: Yes, your Honor.

CROSS-EXAMINATION

Q (By Mr. McPherson) Mr. Price, is this the only time that you have passed out literature on Company property?
A As far as I know, that's the first time.
Q Is this the only time that a Supervisor has asked you to pass out literature on Company property?
A That's right.
Q Have you ever been involved in handbilling with the Union?
MR. ROLNICK: Objection.
TRIAL EXAMINER: Overruled.
THE WITNESS: I have on the streets.

[160] Q (By Mr. McPherson) But, not on Company property?
A Not on Company property.
Q Never on Company property?
A Never on Company property.
Q Why not?
MR. ROLNICK: Objection.
TRIAL EXAMINER: Sustained.

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[161] EARL KING

was called as a witness by and on behalf of the General Counsel and, having first been duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated.

DIRECT EXAMINATION

Q (By Mr. Rolnick) State your name and address for the record, please.
A Earl King, Route #8, Greeneville, Tennessee.
Q Mr. King, are you employed by Magnavox Company in Greeneville, Tennessee?
A I am.
Q How long have you worked for that Company?
A Almost eighteen years.
Q Do you work at Plant No. 3?
A Yes.
Q Are you a member of Local No. 796 in the I.U.E.?
A Yes, I am.
Q Do you hold any office in that Union?
A Yes, I do, President of Local No. 796.
Q How long have you been President?
A About eighteen months.
Q Mr. King, can you tell me, is there any reason why [162] the Local does not mail notices to the bargaining units employed or to the employees?
A Yes, we have a good reason. For one thing, we don't have a—financially we are not able to take on this added expense, and they are so scattered over the country that it is very difficult to get the mail out to everybody.

And, a lot of them would come back, even though we did mail it. Addresses change and it is almost impossible to get it out in the mail.

Q Is there any cost factor involved in trying to handbill the employees as opposed to the mailing of the handbills to them?

A Yes, there is quite a bit more expense to try to mail it out. I don't know, I've thought about it and I think it costs around four hundred dollars maybe to mail these out. Something like that, four hundred dollars difference.

Q Additional beyond the cost of printing, I believe?

A Yes.

Q Is there any reason why the Union does not attempt to take these notices around and deliver them to the employees home?

A That would be impossible since they live so far away from the plant and scattered out all over the country. We just couldn't do it.

Q Is there any reason—

[163] MR. McPHERSON: I object to that line of questioning, Mr. Examiner, it calls for a conclusion as to whether it is possible or impossible.

TRIAL EXAMINER: It does call for a conclusion. The witness has explained the answer. Interrogate him as to the accuracy of his reasons.

Q (Mr. Rolnick) Mr. King, is there any reasons why the Union instead of seeking to pass out literature or leaflets on Company property, doesn't pass out these leaflets or notices at Union meetings?

A Well, they don't have a lot of members present at Union meetings to do any good. Maybe out of all the total members we've got, maybe unless there is something special, there's only about fifty people that come to these meetings.

Q Is there any reason why the Union rather than seek to distribute literature on Company property, doesn't attempt to proceed to put all notices on the Company bulletin board?

A Well, a lot of people don't look at the bulletin board, and we have a provision in the contract, if it's

of a controversial nature, they won't post it. And, maybe we need a chance to get something out in a hurry and we don't always have a way of knowing when it will be posted.

Q My last question, Mr. King, is there any reason why the Union rather than seek to distribute the literature at, or on Company property, will not or finds it difficult to distribute [164] this literature at the entrance to the parking lot?

A The entrance—Well, it's dangerous for one thing to stand out there. Most of the time, when most of the employees are working, we have to do it before daylight. It's dark and the weather conditions a lot of times, it's pretty bad standing out in the rain and the snow. To try to do it, it does present a hardship trying to get it out.

MR. ROLNICK: I have no further questions.

MR. JANETZKE: No questions.

CROSS-EXAMINATION

Q (By Mr. McPherson) Mr. King, is this the first year that it has ever rained or snowed in Greeneville?

A No, sir.

Q Well, then it snowed last year, did it not?

A That's right.

Q And it also rained, did it not?

A That's right.

Q And the year before and the year before?

A Right on back as far as I can remember.

Q Why then suddenly after sixteen years do you feel such an urgent need to try and change what has been historically been the Union practice to hand out notices at the gate, Mr. King?

A We have always wanted to do this, but up until a few months ago, we did not know that we had this right. We did [165] not know that we had any help outside the company. We knew the Company's position and we felt it was futile to say anything about it.

Q What was the Company's position at the time?

MR. JANETZKE: Objection. It is beyond the scope of Direct.

MR. McPHERSON: It is a direct answer to his answer.

TRIAL EXAMINER: Overruled.

THE WITNESS: Would you repeat the question?

Q (By Mr. McPherson) You say that you knew it was against the Company's position. What was the Company's position?

A I knew that they had taken this position, that there would be no distribution on Company property.

Q You have always known that?

A Yes.

MR. ROLNICK: Objection.

MR. McPHERSON: I have no further questions. What about that answer?

TRIAL EXAMINER: The answer stands.

MR. McPHERSON: May I have one moment please?

TRIAL EXAMINER: Yes.

(Pause.)

MR. McPHERSON: I do have one or two other questions.

Q (By Mr. McPherson) Mr. King, you have been President for eighteen months, is that correct?

[166] A Almost maybe, not exactly.

Q Have you ever had the Company refuse to post a notice that you wanted posted on the bulletin board?

A No, it hasn't been presented, anything that is controversial.

Q Now, when you do hand out these handbills at the edge of the Company property, not everyone takes a handbill, is that correct?

A No, they don't.

Q Now, when you say that not everyone reads the bulletin board, how do you know that not everyone reads the bulletin board?

A Well, I have posted notices and they have even missed that about meetings. They say that they didn't know that we were going to have a meeting, even though it was on the board. Like I have had them to tell me that they didn't come to the meeting because they didn't know about it, and it was posted on the bulletin board.

Q Mr. King, when you have given notices to the personnel to be posted, they have almost been posted immediately or on the same day, is that not correct?

A Yes.

Q And is it not true also, Mr. King, that when you have had something you wanted to go up right away and you have told personnel, that they have gotten it up at a time [167] satisfactorly to you?

A Yes, within a reasonable time, yes.

Q You have never had any problems in the plant concerning that matter?

A No.

MR. McPHERSON: I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. Rolnick) Let me clear up one of the mysteries in this case. Can you tell us how you first learned that you had the right to distribute literature on Company property, and when you learned it?

A Yes, sir, it was at a District Counsel meeting in Youngstown, Ohio, when I first learned that we had the right that other Unions had this right. I thought that if we had the right, then I wanted it too. I learned this in Youngstown, Ohio, District No. 7 meeting, and I believe it was the latter part of March in 1970.

Q Have you ever had a leaflet prepared that you did not submit to the Company for fear that the Company would reject it as being controversial?

A Yes.

* * * *

[168] RECROSS-EXAMINATION

Q (By Mr. McPherson) Mr. King, now when you learned about this so-called right, did they explain that these cases that they were speaking of involved an organizational campaign?

A I don't remember just what the case was. I just—

Q You don't remember how it was, is that right?

A I remember what Counsel said.

Q That you had the right to distribute literature on Company property?

A That the Union should have that right.

Q They didn't say whether there was an organizational campaign going on?

A No, sir.

Q They didn't say whether or not there was a Union attempting to oust another Union, or get rid of another Union?

A No.

Q They didn't say whether or not the courts had passed on that or what?

A No, I don't recall.

Q When you learned of this, Mr. King, did you come back and file a grievance saying that the rule was unfair?

A No, I did not.

Q Did you—You didn't go out and just make a hand-out on [169] Company property and ignore the Company, did you?

A No, sir. You mentioned the fact of whether I filed a grievance, and we followed the usual procedure and talked about it first and asked for them to let us.

Q Did you ever file a grievance after you were denied the opportunity?

A No.

Q You have a grievance procedure, don't you?

A That's right.

Q In the contract?

A Yes.

Q Mr. King, you have been President for eighteen months and have you held other Union positions?

MR. ROLNICK: Objection.

TRIAL EXAMINER: Overruled.

THE WITNESS: Only one. Several years back I was Shop Steward.

* * * *

[171] MR. ROLNICK: That concludes the General Counsel's rebuttal.

TRIAL EXAMINER: Does the Respondent have anything further to offer?

MR. McPHERSON: Yes, I do. I would like to recall Mr. John R. Sullivan.

MR. ROLNICK: Your Honor, I believe that the Charging Party might have an opportunity for rebuttal.

MR. JANETZKE: The Charging Party would like to call one witness.

[172] TRIAL EXAMINER: Of course, the Charging Party is permitted.

Whereupon,

JAMES J. KELLEY

was called as a witness by and on behalf of the Charging Party and, having been first duly affirmed, was examined and testified as follows:

TRIAL EXAMINER: Be seated.

DIRECT EXAMINATION

Q (By Mr. Janetzke) State your name and address for the record, please.

A James J. Kelley, Route #4, Greeneville, Tennessee.

TRIAL EXAMINER: How do you spell your last name?

THE WITNESS: (Spelling) K-e-l-l-e-y.

Q (By Mr. Janetzke) Are you employed at the present time?

A Yes.

Q Who is your employer?

A Magnavox Company of Tennessee.

Q How long have you been with Magnavox?

A Nineteen years, five months, and twenty-nine days.

Q What is your job?

A I am a repaireman first class.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

[173] TRIAL EXAMINER: Back on the record.

Q (By Mr. Janetzke) Are you represented by a Labor Organization?

A Yes.

Q Is that Local No. 797?

A Yes, it is Local No. 796 of the I.U.E.

Q Do you hold any position in that Union?

A Yes, I hold a position as Chaplain and I am a member of the Negotiation Committee.

Q I want to direct your attention—Have you ever engaged in the literature distribution?

A Yes, many times.

Q I direct your attention to the last leaflet, when was it handed out?

A October the 8th, 1970.

Q I hand you General Counsel's Exhibit No. 7 and ask you if you can identify the spots where you stood for that distribution of literature?

A Yes, sir, on the ramp where you turn into the parking lot off of Snapps Ferry Road.

Q You had the same route where the "B" was, is that correct?

A Yes.

Q Was anyone else with you?

A Elizabeth Channel.

[174] Q Who is she? Does she hold any position in the Union?

A Yes, she is a Recording Secretary.

Q Do you know who she is employed by?

A Magnavox Company of Tennessee.

Q In reference to that drive area, where did you stand? To the side, the middle, or where?

A We stood in the middle of the aisle.

Q Who is "we"?

A Elizabeth and I.

Q Why did you stand in the middle?

A Because you had to get cars coming in on both sides, and sometimes cars only had to get in that way to get to—To give them the leaflets, you had to stand on the drivers side.

Q Were you standing towards the middle or towards the side?

A No, we were both standing in the middle.

Q Why was it necessary for both of you to stand in the middle?

A Because we could only get every other car coming. You couldn't get a leaflet to every car.

Q You mean that she would take a car and then I would take the next car and she would take the next one, is that right?

A Yes.

Q Now, at any time during the period—Let me ask you this, [175] what time did you arrive there?

A Approximately 6:00 o'clock in the morning.

Q What time did you leave?

A About 6:50. We ran out of literature and leaflets and we went to the next gate.

Q Now, at any time while you were there, was there ever a situation that created a hazard there to your well being?

A Well, it was raining that morning. It was drizzling rain, poor visibility I guess, and I stepped back from handing out a leaflet and almost got hit by a Company tractor-trailer that was leaving the Shipping area and going out to the main gate or the main road.

Q What stopped you from getting hit?

A Elizabeth yelled at met to get out of the way.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

Q (By Mr. Janetzke) You indicated that apparently there were trucks coming out?

A Cars and trucks both coming down on this Route #5, going out.

Q Why would cars be coming out?

A They would go up and discharge passengers out of them like maybe a man and his wife and he works someplace, and he lets her out and comes back out and goes to his job some- [176] place else or go back home or wherever he goes.

Q That would involve about ten minutes to seven?

A Yes, we ran out of literature.

Q You and Elizabeth?

A Yes.

Q Where did you go then?

A We went to the first gate on Kiser Boulevard, the first one from our position.

Q I hand you General Counsel's Exhibit No. 7 and ask you whether you can identify—

MR. McPHERSON: This seems awfully redundant.

TRIAL EXAMINER: I don't know, but we are here so—

MR. JANETZKE: Are you willing to stipulate that it is extremely dangerous conditions that people pass out leaflets to cars and back up the traffic, and that it causes people to be late for work?

MR. McPHERSON: No, I am not going to stipulate to that. You put that testimony on at least by two other witnesses.

THE WITNESS: This right here. (Indicating.)

Q (By Mr. Janetzke) You both came here where the "X" appears?

A Right.

Q How long did you pass out leaflets there?

A Until 7:00. We got up there when it was probably it was five or six minutes until 7:00 when we reached out there, and [177] we had taken Bobby Kimery's place. He was working at the plant that day and he had to leave to punch in, and Margaret Brown moved to the next gate up, and we took their place and handed out there until 7:00 o'clock.

Q You handed out until 7:00?

A We quit at 7:00 o'clock.

Q What was the condition of the traffic so far?

A There was still traffic coming in at 7:00 o'clock. They were lined up and still coming in.

Q Where were they lined up?

A At the entrance gate, the entrance coming into the parking lot.

Q Where you were distributing literature?

A Yes.

Q Now, could you tell us where those employees could be punched in and get to their work area? Could they do it?

A No, sir, they could not, because they had to park and go to the clock, which is quite a ways from where

they had to park. The upper side of the parking lot, the far side of the lot.

Q Did you take any part in the United Fund campaign?

A Yes. I was one of the solicitors.

Q Pardon?

A I was one of the solicitors.

Q As a solicitor, what did you do?

[178] A I contacted people in our department and gave them a pamphlet that described the United Fund action and what we were giving for. What each one got, except the "Y". They didn't have a "Y" on there because it was newly formed at Greeneville, but they told us to tell them that they were getting a certain percentage of the YMCA.

TRIAL EXAMINER: Who told you that?

THE WITNESS: They told us this as a group.

TRIAL EXAMINER: Who are "they"?

THE WITNESS: The fellow who made the speech. The head of—I don't know his name, but I believe Mr. Sites introduced him in the meeting that we had at work.

TRIAL EXAMINER: Which Mr. Sites?

THE WITNESS: Chief Industrial Relations.

TRIAL EXAMINER: Okay. Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

Q (By Mr. Janetzke) When you were distributing for United Fund, were you on or off Company time?

A On Company time.

Q On or off Company property?

A On Company property.

Q Now the people you distributed to, what did you pass out to the people?

A I passed pamphlets out that described the various [179] organizations and what percentage of the United Fund they got.

Q Were they on or off Company time?

A On Company time.

Q On or off Company property?

A On Company property.

MR. JANETZKE: No further questions.

TRIAL EXAMINER: Does General Counsel have any questions? Do you have any questions of this witness?

MR. ROLNICK: No questions.

TRIAL EXAMINER: Cross-Examination.

CROSS-EXAMINATION

Q (By Mr. McPherson) Mr. Kelley, the Union has always made their handouts in the manner in which you described, is that not correct?

A Yes.

Q So, the procedure that you described is nothing new, is it?

A That is right.

Q And you have always had cars and trucks coming out of that entrance there?

A That's right.

Q That's been true ever since the Union has been there, is it not?

A As far as my memory shows me, yes, sir.

[180] Q Now, you say you ran out of material?

A We ran out of leaflets that we were passing out. We ran out at this point.

Q So, you were giving them to every car? You were giving them to car one and your fellow worker would give them to car two?

A Some of the cars would not take the leaflets. We handed them to some people that wouldn't take them, but we tried to give them to every car, yes.

* * * *

JOHN R. SULLIVAN

was recalled as a witness by and on behalf of the Respondent and, having been reminded that he was still under oath, was further examined and testified as follows:

[181] TRIAL EXAMINER: You have previously been sworn and you are still under oath.

DIRECT EXAMINATION

Q (By Mr. McPherson) Mr. Sullivan, you stated that in 1956, you were employed by the I.U.E., is that correct?

A That is correct.

Q That you worked here at Greeneville assisting the Local concerning certification of selection, is that correct?

A That is also correct.

Q Did the Local have a News Letter that they published here at that time?

A There were leaflets put out if that is what you mean, yes.

MR. McPHERSON: I would like to have this marked as Respondent's Exhibit No. 15.

(The document above referred to was marked Respondent's Exhibit No. 15 for identification.)

MR. McPHERSON: If I may, I would like to obtain the original and submit the two copies for that?

TRIAL EXAMINER: Permission is granted. Is this the only copy that you have?

MR. McPHERSON: This is the original.

TRIAL EXAMINER: You may have it.

Q (By Mr. McPherson) Now Mr. Sullivan, I hand you Respondent's Exhibit No. 15 and ask if you can tell me what [182] that is?

A This is a leaflet we put out prior to the election of March 20. It was put out by the Local.

Q It was put out by the I.U.E. Local, is that correct?

A Yes.

Q The Local that represents the employees at Magnavox?

A Yes.

Q Did you help prepare this?

A Yes.

Q This leaflet?

A Yes.

MR. McPHERSON: Mr. Trial Examiner, I would like to call your attention to Page No. 2 of the leaflet, on the lower left hand column that which states for the Company's rules is concerning—Just what the Company's

rule is concerning the distribution of literature on Company property. The document speaks for itself.

I would now move to introduce that document into evidence as Respondent's Exhibit No. 15. And, I have no further questions of the witness.

TRIAL EXAMINER: Any objections?

MR. ROLNICK: I object. This is not part of the rebuttal. This is probably something that might come in the Respondent's case in chief. It is too late to start putting in documents like this.

[183] TRIAL EXAMINER: What is the Charging Party's position?

MR. JANETZKE: This is proper for the Respondent to put in as its original defense. At this time, further—There is no establishment even in the leaflet itself, what it is all about.

TRIAL EXAMINER: I will receive Respondent's Exhibit No. 15 into evidence.

(The document above referred to, heretofore marked Respondent's Exhibit No. 15, was received in evidence.)

MR. McPHERSON: I have no further questions.

TRIAL EXAMINER: Is there any Cross-Examination?

MR. ROLNICK: Your Honor, I don't waive my objection to the receipt of this document.

TRIAL EXAMINER: Of course not.

MR. ROLNICK: I'll ask him a question.

CROSS-EXAMINATION

Q (By Mr. Rolnick) Mr. Sullivan, the document which has been received in evidence as Respondent's Exhibit No. 15, this was put out by the Union during a campaign just prior to the certification of election, was it not?

A That is correct.

* * * *

(2-67)

Budget Bureau No. 64-R001.22

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	DO NOT WRITE IN THIS SPACE Case No. 10-CA-8555 Date Filed 8-27-70

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of Workers Employed
The Magnavox Company of Tennessee	approximately 3,000

c. Address of Establishment (Street and number, city, State, and ZIP code)	d. Employer Representative to Contact	e. Phone No.
Snapps Ferry Road Greeneville, Tennessee	Byran D. Sites, Director Industrial Relations	(615) 638-6472
f. Type of Establishment (Factory, mine, wholesaler, etc.) Factory	g. Identify Principal Product or Service Television and sound products	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and _____ (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about May 1, 1970, it, through its officers, agents and representatives, has interfered with, restrained and coerced and is interfering with, restraining and coercing employees of The Magnavox Company of Tennessee in the exercise of their rights to self organization, to form, join or assist labor organizations, to bargain collectively through agents of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection, or to refrain from any or all such activities, which rights are guaranteed in Section 7 of the Act, by conduct including its unlawful enforcement of a no-solicitation rule so as to prohibit distribution of all literature on Company property including nonwork areas on the employee's own time.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and its Local 796

4a. Address (Street and number, city, State, and ZIP code)	4b. Telephone No.
3461 Office Park Drive, Kettering, Ohio 45439	(513) 294-1491

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ General Counsel, District 7
(Signature of representative or person filing charge) (Title, if any)

Address: 3461 Office Park Drive, Kettering, Ohio 45439 (513) 294-1491 (Telephone number) August 24, 1970 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 788-071

(6)

Case

August 27, 1970

Re: Case No. 10-CA-8555

The Magnavox Company of Tennessee
Snapps Ferry Road
Greeneville, Tennessee 37743

Gentlemen:

A charge has been filed with this office alleging that you have engaged in, and are engaging in, unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the Charge is herewith served upon you. Also enclosed is a copy of Form NLRB-4541, pertaining to our investigative and voluntary adjustment procedures, and the right of any party to be represented by counsel or other representative. A Notice of Appearance form (NLRB-4701) is enclosed for your use in the event you choose to have a representative appear in your behalf.

You, and the Charging Party, and all parties to this proceeding who are served with a copy of this letter, should promptly submit to the Board Agent named below a statement of position and complete written account of all the facts and circumstances which relate to the violations alleged. Also, statements of witnesses and any other evidence in support of a party's position may be submitted.

Your cooperation with this office is invited so that all the facts and the positions of the parties can be considered.

Very truly yours,

435518

Walter C. Phillips
Regional Director

Encls.: Charge (1)
Forms NLRB-4541 and 4701

Docket No. [illegible] OFFICIAL EXHIBIT No. Gen. Counsel's 1-B

REGISTERED MAIL, RETURN RECEIPT REQUESTED

cc: Electrical, Radio Workers and its
Local 706
Attn: Ronald H. Janetzke, General Counsel,
District 7
3561 Office Park Drive
Kettering, Ohio 45439

In the matter of The Magnavox Co. of Tenn.
Date 9-21-71 Witness [illegible] for RD
No. Pages 1 w/ card

Case Assigned To:	Telephone No.
Louis Lipsitz	526-3731

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TENTH REGION

Case No. 10-CA-8555

THE MAGNAVOX COMPANY OF TENNESSEE

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ITS LOCAL 796

COMPLAINT AND NOTICE OF HEARING

It having been charged by International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and its Local 796, herein called the Union, that The Magnavox Company of Tennessee, herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1.

A copy of the charge, filed on August 27, 1970, was served upon Respondent by registered mail on August 27, 1970.

2.

Respondent is, and has been at all times material herein, a Delaware corporation, with an office and place of business located at Greeneville, Tennessee, where it is engaged in the manufacture and sale of television and sound products.

3.

Respondent, during the past calendar year, which period is representative of all times material herein, sold and shipped finished products valued in excess of $50,000 directly to customers located outside the State of Tennessee.

4.

Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

5.

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6.

At all times material herein Respondent has maintained and enforced in the plant the following rule:

> "Soliciting of any kind on company property during working hours will not be permitted."

7.

Since on or about May 21, 1970, Respondent, by maintaining and enforcing the provision set forth in paragraph 6 above, has prohibited its employees from distributing literature on behalf of the Union during employees' non-working time in non-working areas of Respondent's premises.

8.

The acts of Respondent alleged in paragraphs 6 and 7 above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 14th day of January, 1971, at 10:00 a.m., Eastern Standard Time, in the U.S. Post Office and Federal Building, Greeneville, Tennessee, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations

Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases as Taken From the Board's Published Rules and Regulations and Statements of Procedure, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said complaint within 10 days from the service thereof and that unless it does so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Atlanta, Georgia, this 16th day of November, 1970.

/s/ Walter C. Phillips
WALTER C. PHILLIPS, Regional Director
National Labor Relations Board
Room 701, 130 Peachtree Street, N.E.
Atlanta, Georgia 30308

Form NLRB-4668
(9-67) (C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE CASES AS TAKEN FROM THE BOARD'S PUBLISHED RULES AND REGULATIONS AND STATEMENTS OF PROCEDURE

The hearing will be conducted by a Trial Examiner of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D. C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Trial Examiner, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record—for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Trial Examiner conducting the prehearing conference will be the one who will conduct the hearing; and *it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference.* No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript

of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcrip other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Trial Examiner for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Trial Examiner who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's

Rules and Regulations with respect to the procedure to be followed *before* the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Trial Examiner will be considered unless received by the Chief Trial Examiner in Washington, D. C. (or, in cases under the San Francisco, California branch office of Trial Examiners, the Associate Chief Trial Examiner in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Trial Examiner or Associate Chief Trial Examiner, as the case may be. All briefs or proposed findings filed with the Trial Examiner must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Trial Examiner will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Trial Examiner's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Trial Examiner's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Trial Examiner will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

Form NLRB-877
(11-56)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE MAGNAVOX COMPANY OF TENNESSEE

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ITS LOCAL 796

Case No. 10-CA-8555

AFFIDAVIT OF SERVICE OF Complaint and Notice of Hearing with NLRB Form 4668 attached

DATE OF MAILING November 16, 1970

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered/certified mail upon the following persons, addressed to them at the following addresses:

435420

George K. McPherson, Jr., Attorney
Smith, Currie & Hancock
1405 Fulton National Bank Building
Atlanta, Georgia 30303

435421

The Magnavox Company of Tennessee
Snapps Ferry Road
Greeneville, Tennessee 37743

International Union of Electrical, Radio
and Machine Workers, AFL-CIO-CLC and its Local 796
Attn: Ronald H. Janetzke, General Counsel, District 7
3461 Office Park Drive
Kettering, Ohio 45439

435422

Docket No. [illegible] OFFICIAL EXHIBIT No. [illegible]

[illegible]

[illegible] The Magnavox Co. of Tenn.

[illegible] Reporter BM

No. Pages 1 to 1 / 3 Copies

E. J. McDermott

Subscribed and sworn to before me

this 17th day of November, 19 70

Evelyn Francis Designated Agent.

NATIONAL LABOR RELATIONS BOARD

1(d)

GPO 889-884

114

OFFICIAL EXHIBIT No. GENERAL COUNSEL'S No. 1-E

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TENTH REGION

Case No. 10-CA-8555

THE MAGNAVOX COMPANY OF TENNESSEE

AND

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, CLC, AND ITS LOCAL 796

ANSWER

Respondent, The Magnavox Company of Tennessee, files this its Answer to the Complaint in accordance with Section 102.20, 102.21 and 102.23 of the National Labor Relations Board's Rules and Regulations as follows:

1.

Respondent admits service upon it of a copy of the charge on or about the date alleged in Paragraph 1 of the Complaint, but has insufficient knowledge to admit or deny the other allegations set forth in the paragraph.

2.

Respondent admits that it is engaged in the manufacture and sale of television and sound products with an office and place of business located at Greeneville, Tennessee. Respondent denies, however, that it is a Delaware corporation and states that it is a corporation of the State of Tennessee.

3.

Respondent admits the allegations in Paragraphs 3, 4, and 5 of the Complaint.

4.

The Respondent denies the allegation set forth in Paragraph 6 of the Complaint.

5.

Respondent admits that it does prohibit the distribution of literature on behalf of the Union at all times in nonwork areas of Respondent's premises. Respondent denies all other allegations set forth in Paragraph 7 of the Complaint.

6.

Respondent denies the allegations set forth in Paragraph 8 of the Complaint.

By way of further answer to said Complaint, Respondent denies that it has violated or its violating the National Labor Relations Act as amended in any way and more specifically denies that it has violated or is violating Section 8(a)(1) of the Act.

WHEREFORE, having fully answered, Respondent prays that the Complaint be dismissed in its entirety.

Respectfully submitted,

SMITH, CURRIE & HANCOCK
By /s/ George K. McPherson, Jr.
GEORGE K. MCPHERSON, JR.
Attorneys for Respondent

1405 Fulton National Bank Building
Atlanta, Georgia 30303
521-3800

CERTIFICATE OF SERVICE

This is to certify that I, the undersigned, have this day caused to be served by Certified Mail, Return Receipt Requested, the original and four copies of the attached Answer of Respondent on the Regional Director, National Labor Relations Board, Region Ten, Atlanta, Georgia 30308, and one copy of the above Answer on the below-named parties:

International Union of Electrical,
Radio and Machine Workers,
AFL-CIO, CLC
3461 Office Park Drive
Kettering, Ohio 45439
Attention: Ronald H. Janetzke

Local 796
International Union of Electrical,
Radio and Machine Workers,
AFL-CIO, CLC
Kiser Boulevard
Greeneville, Tennessee 37743

Dated this 24th day of November, 1970.

/s/ George K. McPherson, Jr.
GEORGE K. MCPHERSON, JR.

FORM NLRB-858
(6-54)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 10

THE MAGNAVOX COMPANY OF TENNESSEE

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ITS LOCAL 796

Case No. 10-CA-8555

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from January 14, 1971 to February 9, 1971, same time and place.

DATED at Atlanta, Georgia this 6th day of January, 1971.

William J. Rowan

Acting Regional Director,
National Labor Relations Board.

GPO 840-858

1(f)

Form NLRB-4727 (11-66)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE MAGNAVOX COMPANY OF TENNESSEE

and

Case No. 10-CA-8555

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ITS LOCAL 796

AFFIDAVIT OF SERVICE OF Order Rescheduling Hearing

DATE OF MAILING January 6, 1971

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered/certified mail upon the following persons, addressed to them at the following addresses:

George K. McPherson, Jr., Attorney
Smith, Currie & Hancock
1405 Fulton National Bank Building
Atlanta, Georgia 30303

435870

The Magnavox Company of Tennessee
Snapps Ferry Road
Greeneville, Tennessee 37743

435871

International Union of Electrical, Radio and
Machine Workers, AFL-CIO-CLC and its Local 796
Attn: Ronald H. Janetzke, General Counsel, District 7
3461 Office Park Drive
Kettering, Ohio 45439

435872

Docket No. [illegible] OFFICIAL EXHIBIT No. General Counsel's # 1-G

[illegible]

In the matter of: The Magnavox Co. of Tenn.

Dated 1-7-71 Reporter BTL

No. Pages 1 to 3 pages

E. J. McDermott

Subscribed and sworn to before me

this 7th day of January, 19 71

Evelyn Francis Designated Agent.
NATIONAL LABOR RELATIONS BOARD

1(g)

The Magnavox Company of Tennessee
Case No. 10-CA-8555

INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

General Counsel's Exhibit 1(a) Original charge dated 8-27-70

1(b) Affidavit of Service of 1(a) dated 8-27-70

1(c) Complaint and Notice of Hearing dated 11-16-70 with NLRB Form 4668 attached

1(d) Affidavit of Service of 1(c) dated 11-16-70

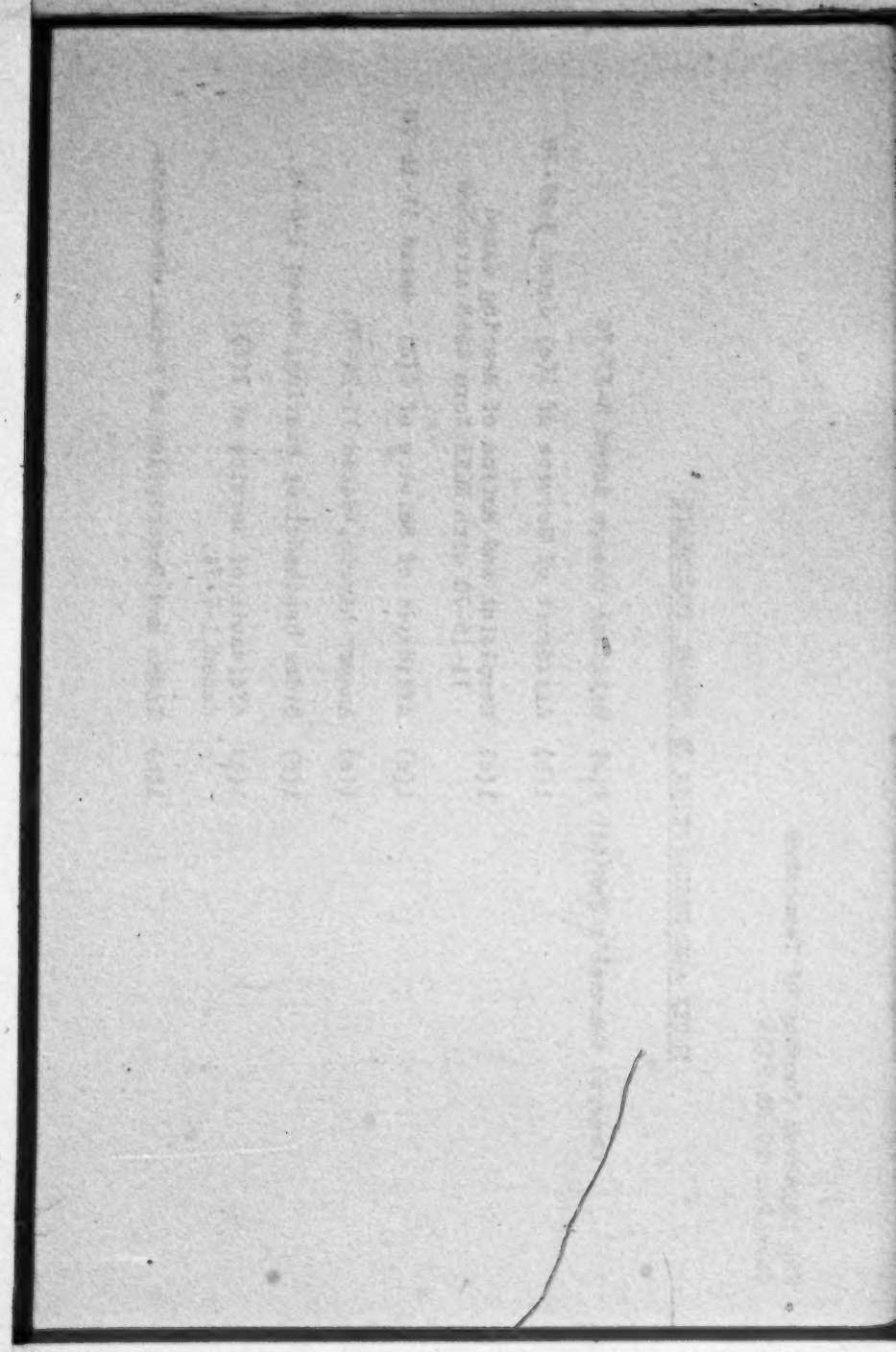
1(e) Answer herein, dated 11-24-70.

1(f) Order Rescheduling Hearing, dated 1-6-71.

1(g) Affidavit of Service of 1(f), dated 1-7-71.

1(h) Index and Description of Formal Documents.

Docket No. ... OFFICIAL EXHIBIT No. ...
Date ...
Witness ...
In the Matter of: The Magnavox Co. of Tenn.
Date of Hearing ... Reporter BF
No. Pages 1



OFFICIAL EXHIBIT NO. GENERAL COUNSEL'S NO. 2

June 25, 1970

Manager, Industrial Relations
The Magnavox Company of Tennessee
Snapps Ferry Road
Greeneville, Tennessee 37743

Re: No-solicitation and
No-distribution rule

Dear Sir:

It has been called to my attention by officers of IUE Local 796 that The Magnavox Company of Tennessee has adopted and/or enforced unlawful no-solicitation and no-distribution rules. This letter is to request that these rules be withdrawn immediately. Specifically, I request that Rule 6 of the plant rules be revoked immediately. In reference to no-solicitation, it is the position of the Union that employees should be allowed to solicit on nonwork time any place on Company property including work areas of the plant. It has also been called to my attention that the Employer is refusing to allow employees to distribute literature on Company property. It is the position of IUE that an employee should be allowed to distribute literature in nonwork areas of the Employer's property, including nonwork areas of the plant on the employee's own time.

If you are agreeable to these conditions, please advise, with a copy to Earl King, President, IUE Local 796.

Thank you for all consideration given this request.

Very truly yours,

RONALD H. JANETZKE
General Counsel

RHJ:rp
cc: W. Steinhilber
R. Fisher
B. King

G 3

OFFICES OF
SMITH, CURRIE & HANCOCK
ATTORNEYS AT LAW
1405 FULTON NATIONAL BANK BUILDING
ATLANTA, GEORGIA 30303

July 16, 1970

Mr. Ronald H. Janetzke
General Counsel
District Council 7
International Union of Electrical,
Radio and Machine Workers, AFL-CIO, CLC
3461 Office Park Drive
Dayton, Ohio 45439

Re: Magnavox Company of Tennessee
No-Distribution Rule

Dear Mr. Janetzke:

Your letter dated June 25, 1970, to the Industrial Relations Manager, Magnavox Company of Tennessee, Greeneville, Tennessee, has been referred to me for reply.

As to solicitations, the Company does allow employees to solicit during non-work time in both non-work and work areas of the plant. As to distribution of literature, the Company by the collective bargaining agreement has the right to make rules and regulations. The only limitation to this right is that such rules will not be unfair or of a discriminatory nature. (Article XII, Paragraph 3, Page 59 of the Collective Bargaining Agreement) As part of this right, the Company formulated the no-solicitation rule which prohibits the distribution of literature on Company property. We feel this rule is neither unfair nor discriminatory in nature and that the union as part of the collective bargaining process has waived its right to distribute literature on Company property. Further, by contract a bulletin board is provided by the Company exclusively for posting union notices. The Company further provides the union with current lists of the names and addresses of its employees so the union has the ability to send literature or material to the employee's home. Of course, the union has contact with its employees through union meetings and, as the union has always done in the past, the union can make pass-outs of literature

Docket No. 5-CA-5334 OFFICIAL EXHIBIT No. General Counsel's # 3
Identified ✓
Received ✓
Rejected
In the matter of The Magnavox Co. of Tenn.
Date 7-27-71 Witness Reporter RH
Ex. Page 2

at the entrance to the Company's property. The Company believes that these avenues of communication of employees are more than adequate and have been accepted by the union by contract and past practice; therefore, the Company does not contemplate revocation of its no-distribution rule at this time.

Very truly yours,

SMITH, CURRIE & HANCOCK

George K. McPherson, Jr.

GKM/nc

cc: Mr. Byron D. Sites

OFFICIAL EXHIBIT NO. GENERAL COUNSEL'S NO. 4

August 24, 1970

George K. McPherson, Jr., Esq.
Smith, Currie & Hancock
1405 Fulton National Bank Building
Atlanta, Georgia 30303

Re: The Magnavox Company of Tennessee
No-Distribution Rule

Dear Mr. McPherson:

Please find enclosed an 8(a)(1) charge which I have filed with the National Labor Relations Board, Region 10, concerning what IUE contends is an unlawful distribution rule. In view of your letter of July 16, 1970, I wish to restate the position of the IUE and its Local 796. We are no longer demanding that the Company revoke its no-solicitation rule, as the no-solicitation rule is lawful on its face, and you represent that the rule does not prohibit solicitation on Company property on the employee's own time. What IUE does seek is the agreement of Magnavox that it will no longer apply its no-solicitation rule so as to prohibit distribution of literature on all Company property. As I stated before, it is the position of IUE and its Local 796 that it has the right to distribute literature in nonwork areas of the Employer's property on the employee's own time. With the Employer's agreement that IUE Local 796 shall have the right to distribute literature in nonwork areas of the Employer's property on the employee's own time, we will immediately withdraw the aforementioned unfair labor practice charge. I urge you to give this matter serious consideration.

Very truly yours,

RONALD H. JANETZKE
General Counsel

RHJ/mtp/ope333
Enclosure
cc: Wesley H. Steinhilber
Richards Fisher
Earl King—Pres. 796
NLRB Region 10

OFFICIAL EXHIBIT NO. GENERAL COUNSEL'S NO. 5

AGREEMENT

BETWEEN

MAGNAVOX COMPANY OF TENNESSEE
Greeneville, Tennessee

—and—

LOCAL 796
of the
INTERNATIONAL UNION OF ELECTRICAL
RADIO AND MACHINE WORKERS,
I.U.E.-A.F.L.-C.I.O.-C.L.C.

July 1, 1968

* * * *

ARTICLE XII

GENERAL

1. The Company will provide one (1) bulletin board in Plant #1 (if bargaining unit employees are regularly assigned there), two (2) bulletin boards in Plant #2 and six (6) bulletin boards in Plant #3 which will be used exclusively for the posting of Union notices. Such notices must be approved by the Manager of Industrial Relations or his designated representative and will be placed on the board by the Personnel Department. It is understood that such notices will be automatically approved unless they are of a controversial nature. These bulletin boards will be labeled "Local 796, IUE-AFL-CIO-CLC".

* * * *

3. The Company will from time to time issue Rules and Regulations for the maintenance of orderly conditions on plant property. These rules will not be unfair or of a discriminatory nature, nor will they conflict with the terms of this agreement.

* * * *

9. The parties agree that memoranda and supplementary agreements predating the signing of this Agreement shall not be binding on the parties unless resigned and redated to conform to the effective dates of this Agreement.

10. It is recognized by the parties that The Magnavox Company of Tennessee is a day work shop and consistent with this, the principle of a fair day's work for a fair day's pay is recognized by both parties to this contract. It is further recognized by the parties that in establishing time values and in measuring a fair day's work the Company will adhere to this principle.

(a) The institution of new occupations, changes in occupation elements, the establishment of standard hours and the time they shall be put into effect shall all be determined by the Company. If an employee feels that the workload is unfair or inequitable, the employee may file a grievance as provided for in the grievance procedure and it shall be processed as herein provided, except that at the first step of the procedure a Company engineer will review the date relevant to the dispute with the employee, a local union official designated to handle such disputes, and the foreman.

(b) The designated union official shall have made available all data pertaining to the dispute for use within the Industrial * * *

* * * *

OFFICIAL EXHIBIT No. GENERAL COUNSEL'S No. 6

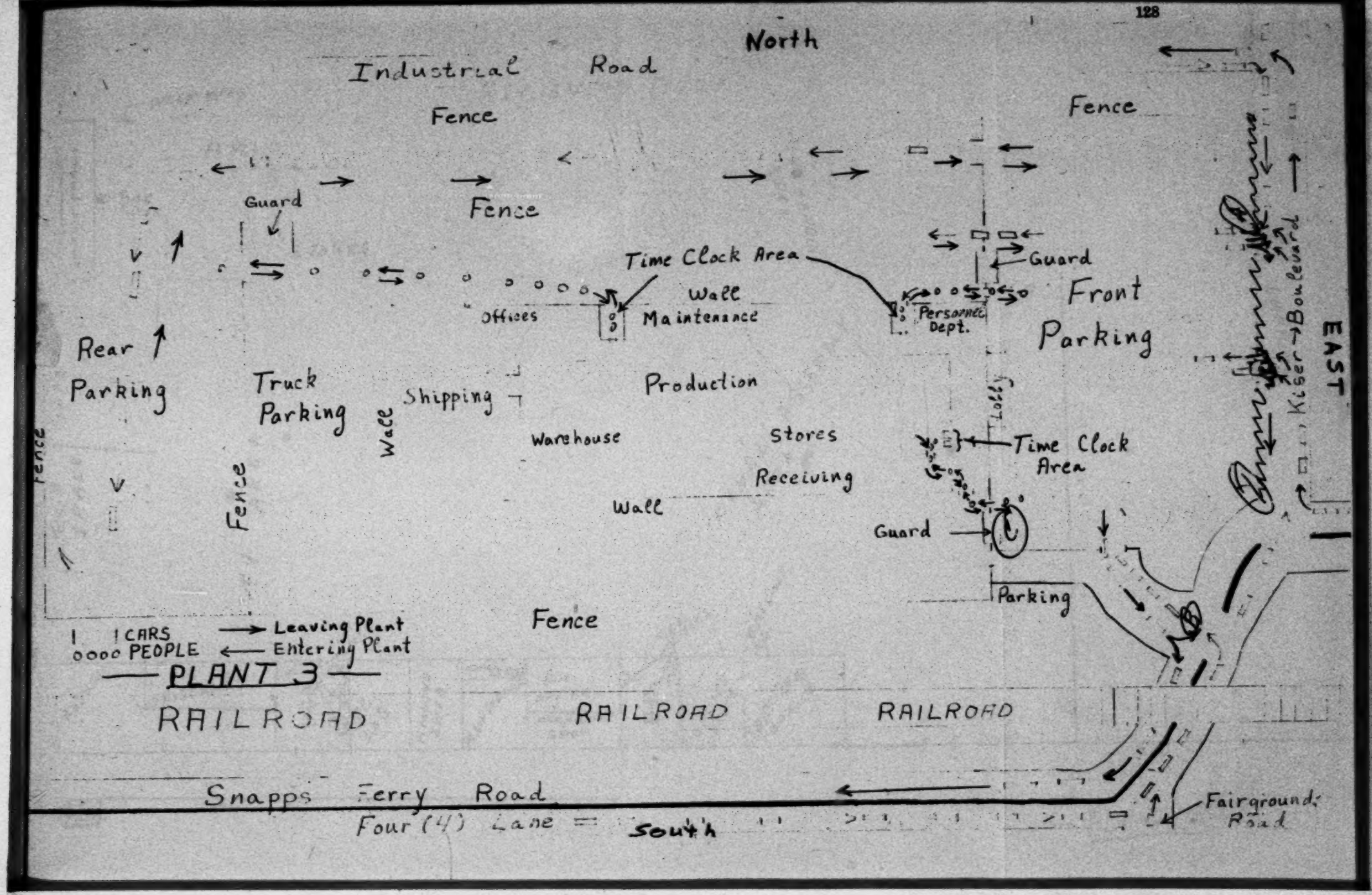
PLANT RULES

The following will not be permitted:

1. Reporting to work intoxicated.
2. Bringing or using alcoholic beverages or drugs on Company Property or during working hours.
3. Fighting on Company Property.
4. Stealing—either from fellow employees or from the Company.
5. Refusal to do work assigned.
6. Soliciting of any kind on Company Property during working hours.
7. Gambling on Company Property.
8. Disregard of the starting and quitting signals for shifts and rest periods.
9. Willful destruction or defacing of Company Property.
10. Unexcused absence of three days or persistent absenteeism.
11. Vulgar and/or profane language.
12. Poor quality of work or production or interfering with work of other employees.
13. Failure to report to Foreman any accident.
14. Countermanding instructions of supervisor.
15. Horseplay.
16. Disobeying safety regulations.
17. Punching another employee's time card.
18. Leaving Company Property during working hours without permission.
19. Intentionally reporting incorrect production.

These rules are subject to change at any time as required. Such changes will be posted for information of all employees.

THE MAGNAVOX COMPANY OF TENNESSEE


North
Industrial Road
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Time Clock Area
Wall
Maintenance
Offices
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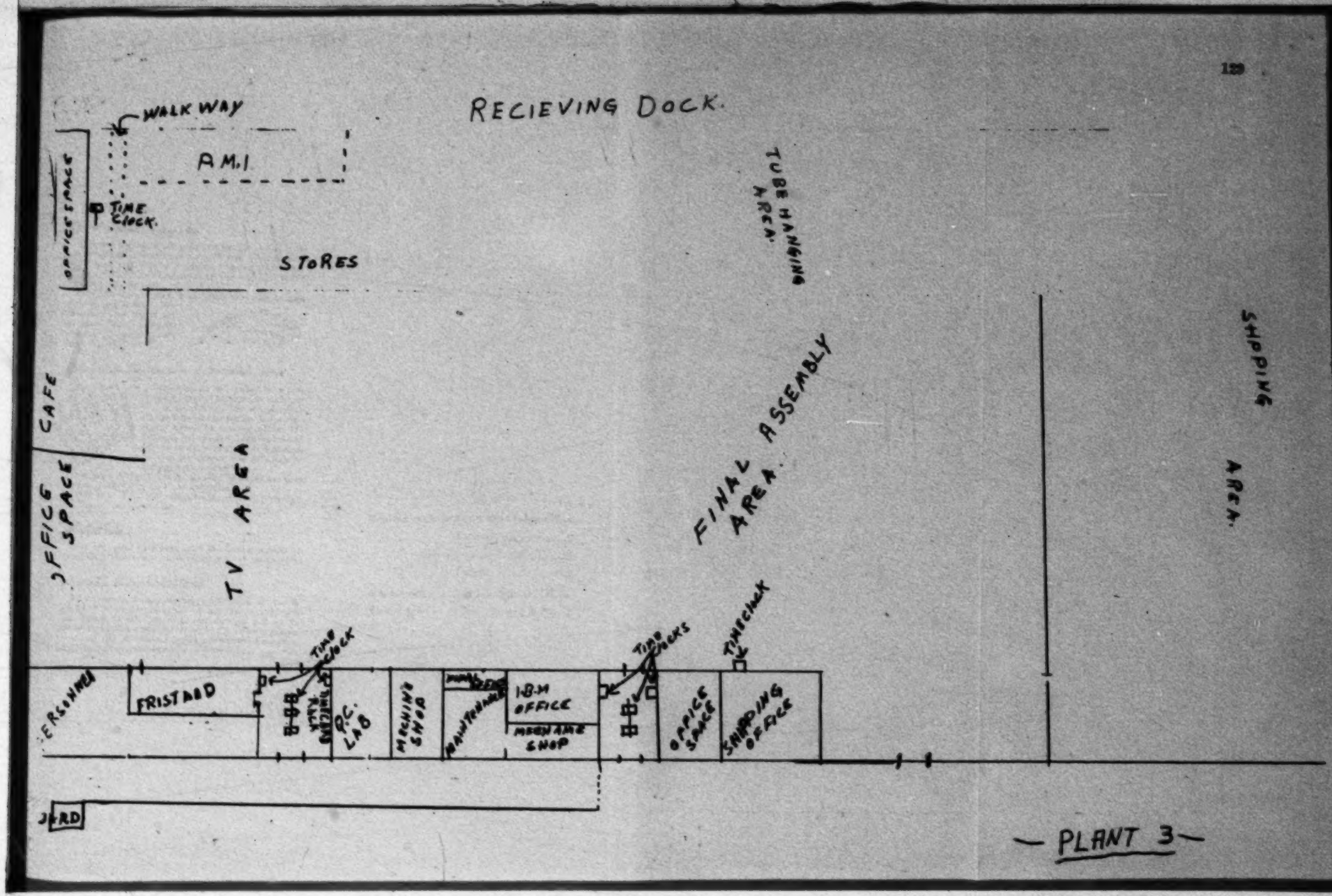
Personnel Dept.
Front Parking
EAST
Kiser Boulevard
Rear Parking
Truck Parking
Shipping
Production
Wall
Warehouse
Stores
Receiving
Wall
Time Clock Area
Guard
Parking
Fence
Fence
Fence
CARS
PEOPLE
Leaving Plant
Entering Plant
PLANT 3
RAILROAD
RAILROAD
RAILROAD
Snapps Ferry Road
Four (4) Lane
South
Fairground Road


RECIEVING DOCK.
WALK WAY
A.M.I
TIME CLOCK.
OFFICE SPACE
STORES
CAFE
OFFICE SPACE
TV AREA
FINAL ASSEMBLY AREA.
TUBE HANGING AREA.
SHOPING AREA.
TIME CLOCK
TIME CLOCK
TIME CLOCK
TIME CLOCK
ERSONNEL
FRISTARD
P.C. LAB
MECHINE SHOP
I.B.M OFFICE
MECHANIC SHOP
OFFICE SPACE
SHIPPING OFFICE
ERD
PLANT 3

Good Housekeeping

One sure indication of a good and efficient worker is the condition and appearance of his work area. Orderliness in your work area reduces accidents, improves health conditions, reduces the possibilities of fires and adds to the efficiency of your work.

We have many visitors in the plant from time to time. A neat and orderly plant impresses these people and is good Public Relations for our Company. Let's keep it clean.

Group Life Insurance and Hospitalization

The Company has worked out a plan with the Lincoln National Life Insurance Co., which provides Life and Hospitalization Insurance for you and hospitalization protection for your dependents. The Company has assumed a large portion of the cost of this plan so that it is possible for each employee to take advantage of the protection offered.

Insurance, of course, can be cancelled by you at any time by written notice to the Personnel Office.

Your share of the Insurance premiums is paid for through the Payroll Deduction Plan.

Handbills

You are asked to refrain from distributing notices or handbills in the parking lots or on other Company property.

Health Examinations

All employees, before becoming employed by Magnavox, are asked to take a health examination, at Company expense. The reason for this is to make sure that you will not be placed on jobs for which you are physically unable to handle. You may also be required to take other physical examinations should your job assignment or general health require it.

Docket No. [illegible] Office Exhibit No. [illegible]

Disposition: Identified ✓ / Rejected ✓ / Withdrawn

In the matter of The Magnavox Co. of Tenn.

Date 3-9-71 Witness [illegible] Reporter [illegible]

No. [illegible]

RES #2

ARTICLE XII

General

1. The Company will provide a Bulletin Board in Plant I and a Bulletin Board in Plant II each of which will be used exclusively for the posting of Union notices. Such notices must be approved by the Director of Industrial Relations or his designated representative and will be placed on the boards by the Personnel Department.

2. The Company will provide two (2) rest periods during the course of each shift. The first period will be provided during the first four hours of the shift, and will be of eight (8) minute duration. The second period will be during the last four hours of the shift and will be of seven (7) minute duration. The Company reserves the right to determine the time when such rest periods are allowed.

3. The Company will from time to time issue Rules and Regulations for the maintenance of orderly conditions on plant property. These rules will not be of a discriminatory nature.

4. In the interest of protecting the health of its employees, the Company may, when it is deemed necessary, require Physical Examinations of any employee by the Company Doctor. Such examinations will in all cases be at Company expense.

5. To insure all employees an opportunity to apply for and give consideration on jobs in higher classifications the following procedure will be followed:

a. When all employees holding seniority on any upgraded job have been returned to such job, and additional

REVISED - March 8, 1955

ARTICLE XII

General

1. The Company will provide a Bulletin Board in Plant I and a Bulletin Board in Plant II each of which will be used exclusively for the posting of Union notices. Such notices must be approved by the Director of Industrial Relations or his designated representative and will be placed on the boards by the Personnel Department. It is understood that such notices will be automatically approved unless they are of a controversial nature. These Bulletin Boards will be labeled "Local 796, IUE-CIO".

2. The Company will provide two (2) rest periods during the course of each shift. The first period will be provided during the first four hours of the shift, and will be of ten (10) minute duration. The second period will be during the last four hours of the shift and will be of ten (10) minute duration. The Company reserves the right to determine the time when such rest periods are allowed.

3. The Company will from time to time issue Rules and Regulations for the maintenance of orderly conditions on plant property. These rules will not be unfair or of a discriminatory nature.

4. In the interest of protecting the health of its employees, the Company may, when it is deemed necessary, require Physical Examinations of any employee by the Company Doctor. Such examinations will in all cases be at Company expense. In the event of a dispute arising as a result of such examination, the dispute shall be subject to the grievance and arbitration procedure.

5. The Union and the Company agree to share equally the cost of printing a sufficient supply of copies of this contract to make them available to all employees. In addition to the contract the booklets may also include the Constitution of the local Union, and a listing of the current officers of the Union.

* (If union prefers that we pay full cost first year and they will share cost in future years.
Company offered to pay in full initially and bill them later in year for their share when they had budgeted a saving.

OFFICIAL EXHIBIT No. RESP. No. 4

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS
AFL-CIO Local No. 796

[SEAL]

Phone 6392
P. O. Box 642

GREENEVILLE, TENN.

March 15, 1956

Mr. Byron D. Sites
Dir. Industrial Relations
The Magnavox Co. of Tennessee
Greeneville, Tennessee

Dear Mr. Sites:

This letter is in confirmation of our telephone conversation of this morning.

It has been called to our attention that on several occasions handbills have been distributed in the plant by the "Committee for Independent Action."

By the same token, yesterday employees distributing our handbill have been denied this right. Yesterday they were driven off company property by one of your plant guards.

Please consider this letter a request that our members be allowed an opportunity to distribute handbills in the plant as has our opposition.

Yours truly,

/s/ Edward F. Lingo
EDWARD F. LINGO

EFL/erm
CC: National Labor Relations Board
Region 10 Peachtree-Seventh Bldg.
Atlanta, Georgia

OFFICIAL EXHIBIT NO. RESP. NO. 5

March 15, 1956

Mr. Edward F. Lingo
AFL-CIO Local No. 796
P. O. Box 642
Greeneville, Tennessee

Dear Mr. Lingo:

In reference to your letter of March 15, any action by any employee in distributing hand bills on Company property was strictly without authorization and in violation of Company rules. Various steps have been taken to prevent such incidents and the following letter today is being addressed to all of our supervision in a further effort to control the matter.

"In this period proceding the election we are faced with the problem of maintaining normal work conditions. It has been called to my attention that people have been bringing in various types of propaganda material and distributing it inside the plant. This is a violation of our rules and must be stopped immediately. If you find any employee engaging in this practice order him to cease immediately and if he fails to abide by your instructions take him to the Personnel Office for disposition of the matter."

We feel that it is improper to permit this type of campaigning within the plant by either party and therefore must refuse your request to permit such distribution.

Yours very truly,

THE MAGNAVOX COMPANY OF TENNESSEE
B. D. SITES
Director of Industrial Relations

BDS:pep
cc: National Labor Relations Board
50 Seventh Street, Northeast
Atlanta 23, Georgia

OFFICIAL EXHIBIT NO. RESP. No. 6

AGREEMENT

BETWEEN

MAGNAVOX COMPANY OF TENNESSEE
Greeneville, Tennessee

AND

LOCAL 796
OF THE
INTERNATIONAL UNION OF
ELECTRICAL RADIO AND MACHINE
WORKERS, I.U.E.-C.I.O.

May 1, 1955

* * * *

ARTICLE I—

UNION RECOGNITION

Whereas the majority of the eligible employees (NLRB Case No. 10-RC-2882) have designated the Union as their sole and exclusive collective bargaining agency and whereas the Union has been so designated and certified by the National Labor Relations Board on December 23, 1954, the Company accords them such recognition for all those employees, but only those employees deemed eligible by declaration of the board in its certification.

* * * *

ARTICLE XII

GENERAL

1. The Company will provide a Bulletin Board in Plant I and a Bulletin Board in Plant II each of which will be used exclusively for the posting of Union Notices. Such notices must be approved by the Director of In-

dustrial Relations or his designated representative and will be placed on the boards by the Personnel Department. It is understood that such notices will be automatically approved unless they are of a controversial nature. These Bulletin Boards will be labeled "Local 796, IUE-CIO."

* * * *

3. The Company will from time to time issue Rules and Regulations for the maintenance of orderly conditions on plant property. These rules will not be unfair or of a discriminatory nature.

* * * *

Plant Rules

The man who said, "Rules are made to be broken," was obviously a rule breaker, or he wouldn't have made such an untrue statement. Rules are made to be followed and observed, not broken. They are usually made only after long study and often after many sad experiences.

Rules at Magnavox are few, fair, and reasonable. We are expected to follow them. Violation of the following may lead to disciplinary action and possible discharge.

1. Reporting to work intoxicated.
2. Bringing or using alcoholic beverages or drugs on Company Property or during working hours.
3. Fighting on Company Property.
4. Stealing—either from fellow employees or from the Company.
5. Refusal to do work assigned.
6. Soliciting of any kind on Company Property during working hours.
7. Gambling on Company Property.
8. Disregard of the warning and posting signals for shifts and rest periods.
9. Willful destruction or defacing of Company Property.
10. Unexcused absence exceeding three days or persistent absenteeism.
11. Vulgar and/or profane language.
12. Poor quality of work or production or interfering with work of other employees.
13. Failure to report to Personnel any accident.
14. Countermanding instructions of supervisor.
15. Horseplay.
16. Disobeying safety regulations.
17. Punching another employee's time card.
18. Leaving Company Property during working hours without permission.
19. Intentionally reporting incorrect production.

Pregnancy

In case of pregnancy you will be given a leave of absence providing you have worked six continuous months for the Company. The leave may not extend beyond ninety days after the birth of the child. Before returning to work you will be asked to present a doctor's release. If you have been granted pregnancy leave and return within the specified period, your seniority is not effected.

Docket No. [illegible] JUDICIAL COURT No. [illegible]

[illegible] Plaintiff ✓
[illegible] Defendant ✓
[illegible] Intervenor

In the [illegible] Court of Texas

[illegible] Term

No. Page /

RECEIPT

I hereby sign and acknowledge receipt of booklet entitled

"YOU AND YOUR COMPANY"

and agree to study its contents carefully and abide by all the rules and regulations contained therein.

SIGNATURE Billy Kinney

CLOCK No. 684

DATE 7.22.53

Docket No. [illegible] DIRECTIONAL EXHIBIT No. Page No. 1-1

Plaintiff's Exhibit [illegible]

In the matter of The Plaintiffs Co. of Texas

Date 2-9-54 Witness Kennedy Reporter D.H.

No. Pages 1

LOCAL 796 IUE AFL-CIO NEWS

VOL. 1, NO. 7 — 203 S. MAIN STREET—GREENEVILLE, TENNESSEE — PHONE 6362 — MARCH 20, 1956

UNION PROTECTION PAYS OFF FOR MAGNAVOX WORKERS!

UNION WINS JOB BACK FOR BOBBY JAYNES

ALSO OTHER IMPORTANT ARBITRATION VICTORIES

Bobby Jaynes has his job back at the Cabinet Plant....THANKS TO HIS UNION!

The Company discharged Bobby claiming "excessive" absenteeism.

Our Union argued that Bobby's discharge by the Company was without just cause. The case went to arbitration.

Last Saturday our Union received word that the arbitrator had upheld the Union's argument and ordered Magnavox to return Bobby to work.

This is just one of six of nine questions submitted to arbitration which our Union won. the decisions received Saturday show. The cases were heard by Arbitrator J. Fred Holly of Knoxville on Feb.7 and 8.

"QUALIFIED" DOES NOT MEAN WHO CAN TURN OUT MOST WORK

Supervision in the Repair Department decided to send an employee home on "temporary layoff" because of lack of work.

The supervisor sent a senior employee home and kept a junior employee because he felt the senior employee would be "somewhat slower" and therefore not "qualified."

The employee filed a grievance that the Company had discriminated against him and had violated seniority.

The Union argued that in order to be a "qualified employee" a worker DOES NOT have to be a speed-up artist who can out-run and out-jump other employees; that the plant cannot be run like a "race track."

The arbitrator ruled that "discrimination was involved" when the Company replaced the senior man with the junior employee. The arbitrator ruled that sending the senior employee home because the supervisor thought he would be "somewhat slower" was "an improper reason for ignoring seniority. The contract does not hold that a qualified employee is the one who turns out the most work."

The arbitrator ruled the senior employee was "qualified by prior experience and by the word of his supervisor to work on the set in question" and was entitled to the pay lost.

This ruling will be helpful to hundreds of employees where the Company discriminates against them on the grounds that they are "somewhat slower" than other workers.

This Is Way It Used To Be!

NOW If We Don't Like It We Can File A Grievance

DON'T RETURN TO THE "OLD DAYS"!

Vote "YES" Tomorrow!

ARBITRATOR SAYS "EXTRA PROTECTION GIVEN TO SENIORITY" BY OUR CONTRACT

In another arbitration case, the Company was ordered to pay Joe Brown and Ruby Waddell for time lost due to the Company's failure to recall them in line with seniority following vacation. The Company claimed they were not recalled in line with seniority because a "temporary layoff" affected them. The arbitrator ruled "there is no way that the delay in recall can be forced to fit" the definition of temporary layoff in the contract. Accordingly he ruled that the two employees are entitled to pay for time lost.

In addition to ruling against the Company's claim that the delay in recall was a "temporary layoff", the arbitrator pointed out that our contract "also gives protection to seniority by providing that even in case of a temporary layoff seniority shall be protected when temporary employment is available elsewhere in the plant. Therefore, it is apparent that extreme protection was given to seniority in the Labor Agreement."

As a result of the arbitrator's decision, the Company will be more careful about what it calls a "temporary layoff" in the future and will be more careful about observing seniority in temporary layoffs.

This benefits all of us.

"AMPLE AUTHORITY" UNDER CONTRACT TO REFUSE OVERTIME, ARBITRATOR RULES

Another arbitration case won by our Union was for Martin M. Smith, who had been discharged by the Company for refusing to work overtime on an upgraded job. After the Union filed a grievance, the discharge was changed to a disciplinary layoff of five days. The question of the Company's right to lay Smith off for five days was taken by the Union to arbitration.

The Union argued that Smith could not have violated the Labor Agreement by refusing overtime work because the contract provides that "in no event shall overtime be deemed compulsory." The arbitrator upheld the Union's argument, declaring, "Mr. Smith had ample authority (under the terms of the contract) to refuse to work overtime...Accordingly, the Company erred in subjecting the aggrieved to the disciplinary layoff. Therefore, he is entitled to pay for the five day period during which he was improperly denied employment."

SO-CALLED "COMMITTEE" BARRED BY COMPANY FROM LEAFLETING IN PLANT

"It has been brought to my attention that people have been bringing in various types of propaganda material and distributing it inside the plant. This is a violation of our rules and must be stopped immediately."

The above statement appeared in a letter from Industrial Relations Director B. D. Sites of Magnavox to Company foremen, copy of which was sent to our Union. Cause for the letter was attempts by the outside "committee for independent action" to distribute their lying literature inside our plant.

General Manager W.H. Graham announced the Company is avoiding "taking part in the (election) campaign this year."

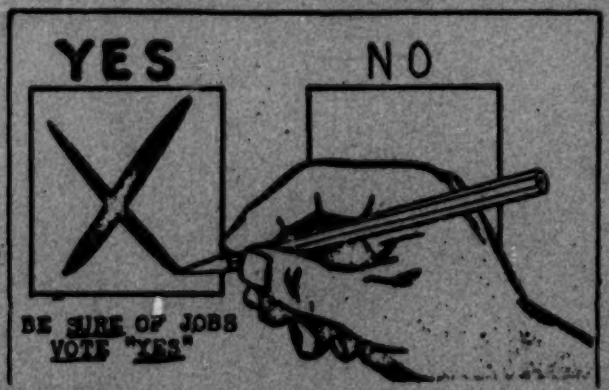
"It is your decision," Mr. Graham wrote employees.

TOMORROW VICTORY DAY FOR ALL OF US

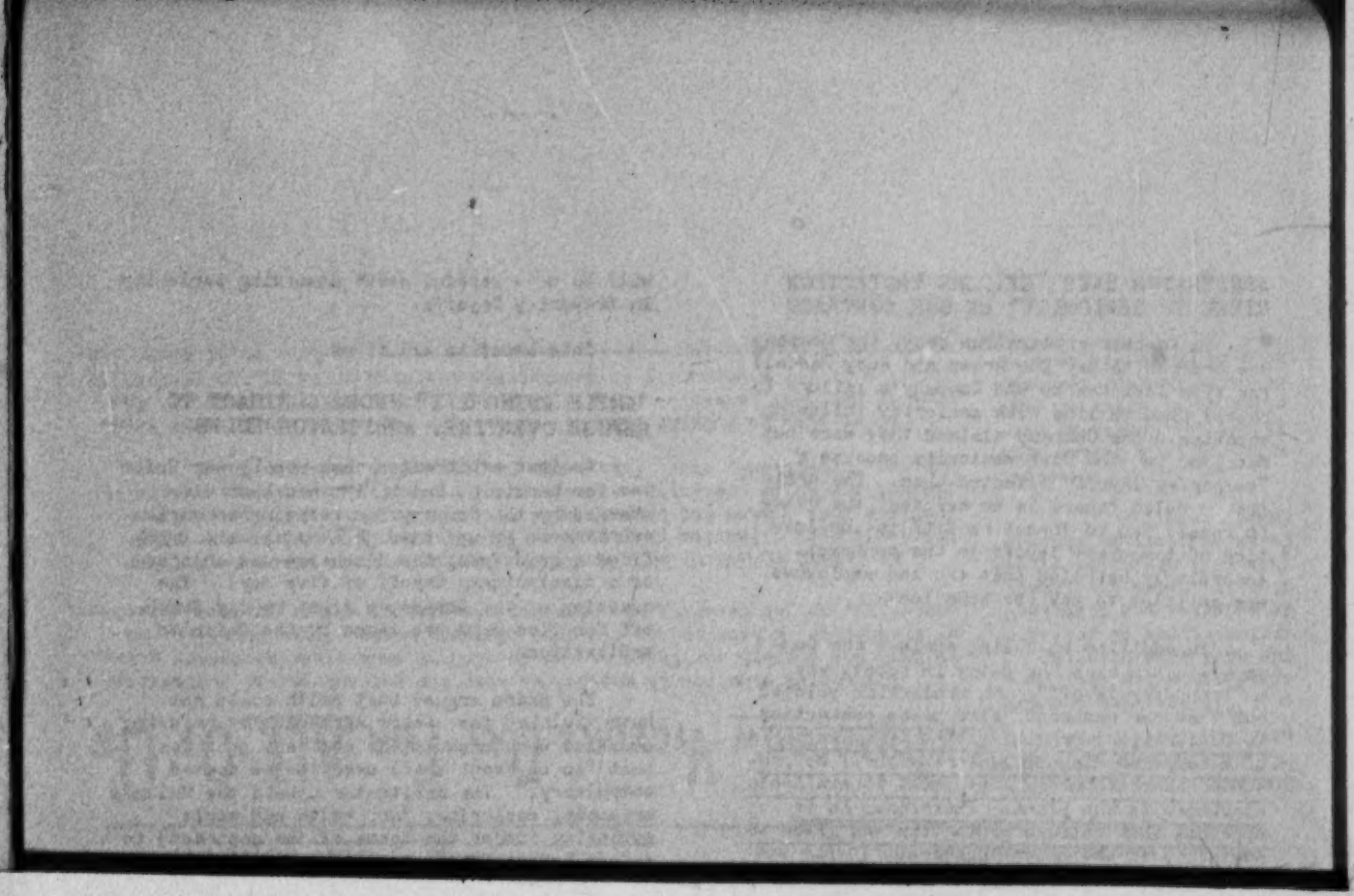
The choice tomorrow is whether we keep the guarantees and protections we have won through our Union and go forward to make other necessary gains, or whether we go back to the old days of lower wages, fewer benefits, no seniority, no job security, no right to bargain, no way to protect ourselves.

WE CANNOT AFFORD TO GO BACKWARDS! One good reason among many: The Company's huge expansion program here (3,000 jobs by summer) means many problems that Union and Company must work out together if rights of employees are to be protected -- problems of seniority, upgradings, shift changes, promotions, etc. This takes the strongest possible Union!

So we must go FORWARD UNITED! What every one of us should want tomorrow is not just to win -- BUT WIN BY THE BIGGEST MAJORITY POSSIBLE! The election is our opportunity to demonstrate the kind of UNITY AND SOLIDARITY we have built among ourselves in one short year -- unity and solidarity that will pay off in greater benefits for all of us!



Let's pile up those "YES" votes in huge numbers tomorrow so we will be prepared to say to management Thursday, "WE ARE UNITED -- LET'S START NEGOTIATING -- LET'S START WORKING ON PROBLEMS IN EXPANSION!"



UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 10-CA-8555

THE MAGNAVOX COMPANY OF TENNESSEE

AND

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, CLC AND ITS LOCAL 796

MOTION TO CORRECT RECORD

Comes now Alan L. Rolnick, Counsel for General Counsel in the above-entitled matter, and files this motion to correct the official report of proceeding of hearing in the above case, conducted on February 9 and 10, 1971, at Greeneville, Tennessee, in the following respects:

Page	*Line*	*Reads*	*Should Read*
9	10	belaboring oral	the laboring oar
13	25	Mr. _____	Mr. McPherson
14	24	clocks on May 22, 1970. The Employer	clocks. On May 22, 1970 the Employer
38	15, 17	placed	pled
56	21	Cork	Quirk
82	23	isn't "No Legal Solicitation"	is an illegal no solicitation
138	3, 4	revolting, revolt	rebuttal, rebuttal
141	3	depletes the question	is a duplicity of questions

Respectfully submitted,

/s/ Alan L. Rolnick
ALAN L. ROLNICK
Counsel for General Counsel

Atlanta, Georgia
March 9, 1971

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 10-CA-8555

THE MAGNAVOX COMPANY OF TENNESSEE

AND

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, AND ITS LOCAL 796

MOTION TO CORRECT RECORD

Comes now George K. McPherson, Jr., Counsel for the Respondent in the above-entitled case, and files this motion to correct the official report of proceeding of hearing in the above case, conducted on February 9 and 10, 1971, at Greeneville, Tennessee, in the following respects:

PAGE	*LINE*	
28	1	Delete "instead of"
28	7	Change "certification" to "decertification"
28	15	Change "certification" to "decertification"
28	18	Change "certification" to "decertification"
35	7	Change "certification" to "decertification"
56	4	Change "be certified" to "decertified"
56	15	Change "certification" to "decertification"
57	22	Which now reads "employee rights, oust and certified" change to read "employees' rights to oust and decertify."
58	8&9	Which now reads "it might be necessary" change to read "it is not necessary."

Respectfully submitted,

/s/ George K. McPherson, Jr.
GEORGE K. MCPHERSON, JR.
Counsel for Respondent

Atlanta, Georgia
March 11, 1971

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 10-CA-8555

THE MAGNAVOX COMPANY OF TENNESSEE
AND
Respondent [1]

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ITS LOCAL 796
Charging Party [2]

CHARGING PARTY'S EXCEPTIONS TO TRIAL EXAMINER'S DECISION

The Charging Party excepts to the following findings of fact by the Trial Examiner:

1. Omission of certain relevant facts from the findings of fact.
2. Page 2, Lines 43-44; Page 3, Lines 1-6; Page 7, Lines 47-50: That Respondent treated the statement in its employee handbook as a rule.
3. Page 6, Lines 1-4: That Respondent had uniformly denied requests by organizations and individuals to distribute literature on Company property.
4. Page 6, Lines 45-47: Mailing of leaflets and notices to members costs approximately $400.00.

The Charging Party excepts to the following conclusional findings:

5. Page 7, Lines 15-19: The Respondent considered its no-distribution request in its employee handbook to be a no-distribution rule.
6. Page 7, Line 48: That Respondent's contention of waiver has merit and should be sustained.
7. Page 8, Lines 1-4: The Union's agreement to the management-prerogative clause incorporated all existing rules into the contract "by implication."
8. Page 8, Lines 9-18: Finding that the Union's

[1] Hereafter called Respondent or Magnavox.

[2] Hereinafter called Union, IUE or Charging Party.

contractual right to use bulletin boards in Respondent's plant was a *"quid pro quo* for the Union's acceptance of the Respondent's right to prohibit distribution of union literature on company property."

9. Page 8, Lines 42-43: Finding that the parties consistently interpreted the contract as prohibiting distribution of union literature on Company property.
10. Page 9, Lines 5-7: That Respondent has not discriminatorily enforced its no-distribution rule against the Union.
11. Page 9, Line 35; Page 10, Line 1: That it would be appropriate to recommend dismissal of the complaint except for Respondent's non-distribution rule's effect upon the employees in the event they wish to campaign against IUE.

The Charging Party excepts to the following recommended order:

12. Page 12, Lines 18-25: To that part of the cease and desist order that prohibits employees from distributing literature on behalf of the IUE in nonworking areas on nonworking time.
13. Notice to Employees: To that part of the notice to employees that prohibits employees from distributing literature on behalf of the IUE in nonworking areas on nonworking time.

Dated at Kettering, Ohio, this 28th day of May, 1971.

Respectfully submitted,

/s/ Ronald H. Janetzke
RONALD H. JANETZKE
General Counsel
District Council 7
International Union of Electrical,
Radio and Machine Workers,
AFL-CIO-CLC
3461 Office Park Drive
Kettering, Ohio 45439
Telephone: (513) 294-1491

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

Case No. 10-CA-8555

IN THE MATTER OF:
THE MAGNAVOX COMPANY OF TENNESSEE
—and—
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ITS LOCAL 796

RESPONDENT'S CROSS EXCEPTIONS TO CERTAIN PORTIONS OF THE TRIAL EXAMINER'S DECISION AND RECOMMENDED ORDER

COMES NOW THE MAGNAVOX COMPANY OF TENNESSEE, Respondent in the above-styled case, and files these, its Exceptions to Certain Portions of the Trial Examiner's Decision and Recommended Order in this case.

1.

Respondent excepts to the Trial Examiner's finding and conclusion that Respondent's no-distribution rule prohibiting all distribution of literature on Company property violated Section 8(a)(1) of the National Labor Relations Act, as amended, to the extent said rule proscribed distribution by employees on behalf of any labor organization other than the incumbent (TXD, p. 12,11. 1-3) on the grounds that:

(a) Such finding is based upon an improper conclusion drawn from the evidence.
(b) Such finding is based upon an improper conclusion of law.

2.

Respondent excepts to the Trial Examiner's Recommended Order insofar as it would require Respondent to:

> [c]ease and desist from maintaining, giving effect to or enforcing any rule which prohibits any employee from distributing literature in behalf of any labor organization other than International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and its Local 796, where the activity occurs in nonworking areas on nonworking time (TXD, p. 12, 11. 15-25)

on the ground that such Order is based upon an improper conclusion of law that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended.

3.

Respondent excepts to the Trial Examiner's Recommended Order insofar as it would require Respondent to post the "Notice to Employees" designated as "Appendix" (TXD, p. 12, 11. 27-35, p. 13, 11. 1-4) on the ground that such Order is based upon an improper conclusion of law that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended.

WHEREFORE, Respondent, The Magnavox Company of Tennessee, prays that the Trial Examiner's Decision and Recommended Order be modified as to those matters excepted to and that the Board enter an Order dismissing the Complaint in this case in its entirety.

Respectfully submitted,

SMITH, CURRIE & HANCOCK

By:_____
GEORGE K. MCPHERSON, JR.

By:_____
JAMES ALLAN SMITH

1405 Fulton National Bank Bldg.
Atlanta, Georgia 30303
Telephone: 404/521-3800

Greeneville, Tenn.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 10-CA-8555

THE MAGNAVOX COMPANY OF TENNESSEE

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ITS LOCAL 796

ORDER CORRECTING DECISION AND ORDER

On January 31, 1972, the National Labor Relations Board issued a Decision and Order[1] in the above-entitled proceeding.

IT IS HEREBY ORDERED that said Decision and Order be, and it hereby is, corrected by striking the second paragraph from the first page of the Decision.

IT IS FURTHER ORDERED that the Decision and Order, as printed, shall appear as hereby corrected.

Dated, Washington, D. C., February 9, 1972.

By direction of the Board:

GEORGE A. LEET

Associate Executive Secretary

[1] 195 NLRB No. 40.

SUPREME COURT OF THE UNITED STATES

No. 72-1637

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

THE MAGNAVOX COMPANY OF TENNESSEE

ORDER ALLOWING CERTIORARI—Filed October 9, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1973 528020 122